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Employee's Claim Petition for Compensation.

(Filed April 26, 1927.)

New Jersey Department of Labor

Workmen's Compensation Bureau.

Trenton, N. J.

10

JACOB ROSEN,
Petitioner,

vs.

A. FISHMAN HAT Co., INC.,
Respondent.

20

Date of accident, December 14, 1926.

Attorney for Petitioner, KRAEMER & SIEGLER,
164 Market Street, Newark, N. J.

*To the Workmen's Compensation Bureau of New
Jersey:*

The claimant respectfully alleges the following facts:

30

What is your name? Jacob Rosen.

Where do you live? 293 Hunterdon Street,
Newark, New Jersey.

Sex, Male. Age, 55. Married, Yes.

By whom were you employed at the time of the
accident (give name and business address)? A.
Fishman Hat Co., Inc., 24 Spring Street, Newark,
New Jersey.

What was the business of your employer? Hat
manufacturer.

40

Employee's Claim Petition for Compensation.

Did you give written notice to your employer at the time you were hired, or later, that the Compensation Law should not apply to you? No.

Did you receive such notice from your employer? No.

10 Did your employer have knowledge of your accident? Yes.

Did you notify your employer of your accident? Yes.

If so, on what date? December 17th, 1926.

Have you made claim to your employer for compensation? Yes.

20 What was your regular occupation, and what kind of work were you doing at the time of the accident? Machine hand in the starter department of the hat factory.

When did the accident happen? December 14th, 1926.

Where did the accident happen? December 14th, 1926, I was taken ill at the factory.

What was the nature of the accident, and how did it happen? Mercury poisoning contracted by reason of the occupation in which I was engaged.

On what date were you compelled to stop work because of the injury? December 14th, 1926.

30 On what date were you well enough to work again? I am not working yet.

If still disabled, on what date do you think you will be able to work? Permanently disabled.

Give nature of any injury from which you will recover.

If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully. Will be disabled permanently because of the poisoning above set forth.

40

Employee's Claim Petition for Compensation.

Were your wages fixed by piece-work? Yes.

If so, what was your average weekly wage?
\$50.00 per week.

If wages were fixed by the hour, state rate per hour.....

Give number of hours in an ordinary working day. Eight hours. 10

Give number of days in an ordinary working week. 5½ days.

State the amount of weekly wages.....

How much money have you received from your employer as compensation (not medical aid) since your accident? Nothing.

Has your employer promised to pay you any compensation? No.

If so, how much?.....

Was medical aid required? Yes. 20

Did you receive medical, surgical or hospital service? Medical aid.

Did you request your employer to furnish these services? Yes.

Were they furnished? Not until March 15th, 1927.

If so, between what dates? From March 15th, 1927, to date; Dr. Avidan is still attending me.

If not, what sum did you expend for medical, surgical or hospital services? Prior to March 15th, 1927, I was attended by Dr. Hoeler, and his bill amounted to \$120.00. 30

Give name and address of physician and hospital. Do. William F. Hoeler, 808 South 11th Street, Newark, New Jersey.

What other facts are there which you believe important? At an informal hearing before Commissioner Wagner I was awarded 21 weeks' temporary disability, at \$17.00 per week, plus the \$120 medical expense. 40

Employee's Claim Petition for Compensation.

Are you willing that the Compensation Bureau endeavor to secure compensation for you, by agreement, before calling for an official hearing? Yes.

Your Petitioner therefore prays that your Honorable Bureau will determine the amount of compensation due to your Petitioner from the said
10 defendant, under the act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of the employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, 1911, and the Acts supplemental thereto and amendatory thereof, and that your Petitioner may be awarded
20 his costs in this proceeding and such other or further relief as may be proper.

And your Petitioner will ever pray, etc.

(Signed) JACOB ROSEN,
293 Hunterdon Street,
Newark, N. J.

30

40

Employee's Claim Petition for Compensation.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

JACOB ROSEN, of full age, being duly sworn according to law, on his oath deposes and says: That he is the petitioner named in the foregoing petition; and that he has read the same and is familiar with the contents thereof; and that the matter and things therein set forth are true according to the best of his knowledge and belief. 10

(Signed) JACOB ROSEN.

Subscribed and sworn to before me, this twenty-fifth day of April, 1927, at Newark, N. J.

(Signed) JENNIE MICHELSTEIN,
 A Notary Public of New Jersey. 20

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.)

TO THE RESPONDENT.

The foregoing claim petition has been presented by the petitioner to the Workmen's Compensation Bureau for hearing and determination in accordance with the provisions of the Workmen's Compensation Act." 30

We hereby notify you that unless an answer shall within ten days after the service of this notice, be filed in duplicate with the Secretary of the Bureau, in the State House at Trenton, the facts alleged in the petition will be deemed to be admitted and no testimony will be required from the petitioner to prove such facts.

WORKMEN'S COMPENSATION BUREAU, 40
 W. E. STUBBS,
 Secretary.

**Respondent's Answer to Employee's Claim
Petition.**

(Filed May 23, 1927.)

NEW JERSEY DEPARTMENT OF LABOR.

Workmen's Compensation Bureau,
Trenton, N. J.

10

JACOB ROSEN,
Petitioner,

vs.

A. FISHMAN HAT Co., INC.,
Respondent.

20

Claim Petition No. 6617. May 23, 1927.

Attorney for Respondent WILLIAM W. GIDDES,
417 Lincoln Ave., Dunellen, N. J.

In answer to Claim Petition filed in this cause:

What is the petitioner's name? Jacob Rosen.

Where does he reside? 293 Hunterdon Street,
Newark, N. J.

30

Was the petitioner in your employ at the time
of the accident? Was in our employ on December
14, 1926.

State your business. Hat Manufacturer.

Did you receive written notice from the Peti-
tioner at the time of hiring, or later, that the Com-
pensation Law was not to apply to him? No.

Did you give such notice to him? No.

When did you first have knowledge of this acci-
dent? First knowledge of illness was received
from doctor on February 14, 1927.

40

Did you receive notice of this accident from the
Petitioner? No.

*Respondent's Answer to Employee's Claim
Petition.*

If so, on what date?

Has any claim for compensation been made?

Yes.

What was the Petitioner's regular occupation, and what kind of work was he doing at the time of the accident? Machine hand in starting department. 10

When did the accident happen? We have no knowledge or information sufficient to form a belief.

Where did the accident happen? We have no knowledge or information sufficient to form a belief.

What was the nature of the accident, and how did it happen? We have no knowledge or information sufficient to form a belief. We also deny that mercury or any chemical whatsoever is used anywhere in the plant of the respondent, and further deny that petitioner contracted mercury poisoning by reason of the occupation in which he was engaged with the respondent. 20

On what date was the petitioner compelled to stop work because of injury? He left the plant on December 15, 1926, but reported no accident or illness.

On what day was the injured well enough to work again? Has never returned. 30

If still disabled, on what date do you estimate he will be able to work? Do not know.

Give your understanding of the nature of any injury from which he should recover? Deny permanent disability. We deny that he sustained any injury or disease in the cause of or arising out of his employment.

Give your understanding of any permanent injury which has resulted, either amputation or loss 40

*Respondent's Answer to Employee's Claim
Petition.*

of usefulness of any member or impairment of any physical organ. Explain fully. We deny that he sustained any injury or disease in the cause of or arising out of his employment, and deny that he will be disabled permanently, and further deny that he contracted mercury poisoning in the employ of the Respondent.

10

Were the wages fixed by piece-work?

If so, what was the average weekly wage of the injured?

If wages were fixed by the hour, state rate per hour.

Give number of hours in an ordinary working day. 8 hours.

20

Give number of days in an ordinary working week. 5½ days.

State the amount of weekly wages. \$40.00 per week.

How much money have you paid the injured as compensation (not including medical aid) since the accident? None.

Have you promised to pay compensation? No.

If so, how much?

Was medical aid required? Yes, after March 15, 1927.

30

Were you requested to supply the necessary medical service required by law? Not until March 15, 1927.

Did you furnish this service? Yes.

If so, between what dates? After March 15, 1927.

If not, give reason for failure to do so.

Give name of physician and hospital rendering service at your direction. Dr. M. S. Avidan, 30 Stratford Place, Newark, N. J.

40

What other facts are there which you believe important? If you deny that compensation is pay-

*Respondent's Answer to Employee's Claim
Petition.*

able in this case, explain fully your reasons for this conclusion. The Respondent contends that as the Respondent neither furnishes, uses or makes use of mercury or any chemical whatsoever in its plant in the manufacturing of hats or for any other purpose, the Petitioner did not suffer an accident or contract an occupational disease while in its employ. 10

A. FISHMAN HAT Co., INC.,
Respondent.
24 Spring Street,
Newark, N. J.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.: 20

EMANUEL FISHMAN, of full age, being duly sworn according to law, on his oath deposes and says: That he is the respondent named in the foregoing answer to claim petition; that he has read the same and is familiar with the contents thereof; and that the matters and things therein set forth are true according to the best of his knowledge and belief.

A. FISHMAN HAT Co., INC. 30
EMANUEL FISHMAN
Respondent.

Subscribed and sworn to before me, this Twenty-fourth day of May, 1927, at Newark, New Jersey.

BENJ. NEWMAN,
Notary Public.

(This affidavit may be sworn to before a Deputy Commissioner or a Compensation Referee, or any other person authorized to administer an oath.) 40

Judgment of Affirmance.

(Filed November 29, 1927.)

ESSEX COUNTY COMMON PLEAS COURT.

10

 JACOB ROSEN,
 Petitioner-Appellee,
vs.
 A. FISHMAN HAT CO., INC.,
 Respondent-Appellant.

On Appeal.

JUDGMENT OF
AFFIRMANCE.

20

A. Fishman Hat Co., Inc., the respondent in the above-entitled proceedings, having appealed from the judgment of Harry J. Goas, Deputy Commissioner, filed on August 13th, 1927, and upon application of William W. Giddes, attorney for the respondent-appellant, Honorable Daniel J. Brennan, President Judge of the Essex County Common Pleas Court having fixed the Ninth day of November, 1927, at ten o'clock in the forenoon, as the time of the hearing of the appeal in the above case, before the Court of Common Pleas at the Court House, Newark, Essex County, New Jersey, and said hearing having been continued from time to time and coming on to be heard on Friday, November 18th, before the Honorable Walter D. Van Riper, President Judge of the Court of Common Pleas, and the court having considered the same, and the argument of counsel, it is, on this

30

ORDERED and ADJUDGED that the petitioner-appellee, Jacob Rosen, was on the Seventeenth day of December, 1926, in the employ of the respondent, A. Fishman Hat Co., Inc., which employment was subject to the compensation section of page

40

Judgment of Affirmance.

98, Laws of 1911, and the supplements and amendments thereto.

Second.—That on the aforesaid date, the petitioner was disabled by a compensable occupational disease, to wit: mercury poisoning, and that the exposure thereto occurred during his employment, and that the disability commenced within five months after the determination of such exposure. 10

Third.—That the respondent herein had knowledge of the said disability by reason of said occupational disease within the time prescribed in Paragraph 22D of the Laws of 1924, Chapter 124.

Fourth.—That the petitioner, as a result of said occupational disease, suffered a temporary disability of twenty-five weeks. 20

Fifth.—That the wages of the petitioner at the time of the disability were \$40.00 a week.

Sixth.—That the petitioner is entitled to compensation from the respondent for permanent disability, amounting to 25% total disability, amounting to one hundred twenty-five weeks, at \$17.00 per week.

Seventh.—Petitioner is entitled to medical expenses amounting to \$140.00. 30

And it is further ORDERED that the judgment of Harry J. Goas, Deputy Commissioner herein be and the same is in all things affirmed, and that judgment final be entered in favor of the said Jacob Rosen, the petitioner-appellee and against the said A. Fishman Hat Co., Inc., respondent-appellant, for temporary disability immediate payment of compensation of twenty-five weeks at \$17.00 a week, amounting to \$425.00, for perma- 40

Judgment of Affirmance.

ment disability immediate payment of compensation, 25% of total disability or one hundred twenty-five weeks at \$17.00 a week, or \$2,125.00, and

10 It is further ORDERED that the judgment of the said Harry J. Goas, Deputy Commissioner ordering that the respondent pay the petitioner his medical expenses of \$140.00 and Kraemer & Siegler, attorneys for the petitioner, a counsel fee of \$200.00 and \$5.00 for stenographer's fees and the cost of filing the aforesaid order of the said Harry J. Goas, Deputy Commissioner, in the Court of Common Pleas of Essex County, be and the same is hereby affirmed and made the judgment of this court, and

20 It is further ORDERED that the respondent-appellant pay Kraemer & Siegler, Attorneys for the Petitioner-Appellee, a counsel fee of \$100.00 for this appeal, in addition to the counsel fee allowed by the said Harry J. Goas, Deputy Commissioner, together with the costs of these proceedings.

WALTER D. VAN RIPER.

Writ of Certiorari.

30

(Filed Feb. 25, 1928.)

NEW JERSEY, SS. :

THE STATE OF NEW JERSEY to Jacob Rosen, and the Court of Common Pleas in and for the County of Essex, and John H. Scott, Clerk of said Court, GREETING :

40

We being willing for certain reasons to be certified of and concerning a certain determination and judgment rendered on the 29th day of Novem-

Writ of Certiorari.

ber, Nineteen hundred and twenty-seven, by the Hon. Walter D. Van Riper, one of the Judges of the said Court, of Common Pleas in and for said County of Essex, in certain proceedings brought on behalf of Jacob Rosen, Petitioner against A. Fishman Hat Co., Inc., Respondent, for the determination and recovery of compensation under an Act of the Legislature of the State of New Jersey entitled, "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April 4th, Nineteen hundred and eleven, and the acts amendatory thereof, and supplemental thereto, we command you that the said determination and judgment, together with all proceedings for the making of the same, and all things touching and concerning the same, as fully and entirely as before you they remain, or are in your custody and control, you do certify and send, together with this writ, to our Justices of our Supreme Court of Judicature at Trenton on the 16th day of March, Nineteen hundred and twenty-eight, that therein may be caused to be done what of right and according to law ought to be done.

Witness, the Honorable William S. Gummere, Chief Justice of our said Supreme Court at Trenton, this 25th day of February, nineteen hundred and twenty-eight.

EDWARD J. KELLEHER,
Clerk.

EMIL NEBLO,
Attorney.

This writ is allowed; let it be sealed.

WM. S. GUMMERE,
C. J.

Reasons on Certiorari.

(Filed March 16, 1928)

NEW JERSEY SUPREME COURT.

10

A. FISHMAN HAT CO., INC.,
Prosecutor,*vs.*JACOB ROSEN, *et al.*,
Defendants.On
Certiorari.

20

The prosecutor prays that the Determination and Judgment of the Essex County Court of Common Pleas, and the New Jersey Department of Labor, Workmen's Compensation Bureau, may be set aside, reversed, and for nothing holden for the following reasons:

30

1. The said Workmen's Compensation Bureau and Essex County Common Pleas were without jurisdiction to entertain the said petition and to make an order for compensation because, by virtue of the provisions of the Act under which the said petition was filed the petitioner did not sustain an injury by accident arising out of and in the course of the employment.

2. It did not appear by the evidence that the petitioner sustained an injury by accident arising out of and in the course of the employment.

40

3. It did not appear by the evidence that the petitioner contracted mercury poisoning while in

Reasons.

the employ of the respondent, and that the exposure occurred during the employment, and that the disability commenced within five months after the termination of such exposure.

4. It did not appear by the evidence that the respondent furnishes, uses and makes use of mercury or any chemical whatsoever in its plant in the manufacturing of hats or for any other purpose, nor did it appear by the evidence that in performing his duties the petitioner used or made use of mercury or any other chemical which would cause the petitioner to suffer from mercury poisoning or any other poisoning, nor did it appear by the evidence that the duties of the petitioner were such as to subject him to any occupational disease, nor did it appear by the evidence that the respondent had notice or knowledge that the petitioner had contracted mercury poisoning while in the employ of the respondent, nor did it appear by the evidence that written notice or claim was given the respondent that the petitioner had contracted mercury poisoning or any other compensable occupational disease.

5. An Act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation, Chapter 95, P. L. 1911, as amended and supplemented, is unconstitutional, because it embraces more than one object and it violates sub-division 4, Section VII, of the New Jersey Constitution.

Reasons.

10 6. An Act entitled "A supplement to an Act entitled An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder", approved April 4, 1911, being Chapter 124, P. L. 1924, as amended, is unconstitutional because it embraces an object which is not expressed in its title, and violates Subdivision 4, Section VII, of the New Jersey Constitution.

20 7. The New Jersey Department of Labor, Workmen's Compensation Bureau, is without authority and jurisdiction to entertain a claim arising under Chapter 124, P. L. 1924, as amended.

8. The said proceedings and judgment are in divers other respects irregular, unjust, illegal and oppressive to the prosecutor.

EMIL NEBLO,
Attorney of Prosecutor.

30

40

Testimony.

NEW JERSEY DEPARTMENT OF LABOR,
 WORKMEN'S COMPENSATION BUREAU,
 Newark, Essex County District.

<p style="text-align: center;">JACOB ROSEN, Petitioner,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">FISHMAN HAT Co., Respondent.</p>	}	10
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Transcript of Testimony taken in the above en- 20
 titled matter, before Harry J. Goas, Deputy Com-
 pensation Commissioner, at the Department of
 Labor Building, Newark, N. J., on the twenty-
 ninth day of July, 1927.

Appearances :

JOSEPH KRAEMER, Esq. (MESSRS. KRAEMER &
 SIEGLER), for the Petitioner.

WILLIAM W. GIDDES, Esq., for the Respondent. 30

JACOB ROSEN, the petitioner, sworn as a witness
 on his own behalf, testifies as follows:

Direct examination by Mr. Kraemer:

Q. Mr. Rosen, where do you live? A. 293 Hun-
 tertown Street.

40

Jacob Rosen, the Petitioner—Direct.

Q. And what is your trade? A. Hatter.

Q. How long have you been a hatter? A. Thirty-three years.

Q. And what was your last job? A. Fishman Hat Company.

10 Q. When did you quit that job? A. Fourteenth of December.

Q. 1926? A. Yes.

Q. Have you gone back to work since that time? A. No.

Q. Why did you quit? A. I cannot work.

Q. What is the matter with you? A. I have the shakes.

Q. What? A. Why, the shakes.

Q. Where? A. By the work.

20 Q. Now, when you say "shakes", what do you mean? A. Why, shaking. The head—the whole body is shaking. Now it is a little better. Before I lay in bed six weeks before I got up from the bed.

Q. Now, when did you say you stopped working? A. Fourteenth of December.

By the Court:

Q. Of 1926?

30 Mr. Kraemer: 1926, yes.

Q. And did you tell anybody you were quitting?

A. Yes, I told him in the shop I was quitting.

Q. Who did you tell? A. I told the boss.

Q. And who is that? A. The boss is Mr. Morris Fishman.

Q. Morris Fishman? A. Yes.

Q. And is he a member of the firm of A. Fishman Hat Company? A. Yes, he is the boss.

40

Jacob Rosen, the Petitioner—Direct.

Q. What did you tell him? A. I shake me—"I cannot work."

Q. Now, what particular department did you work in? A. It was a start.

Q. What did you do—what does your work consist of? A. The first I take the hats from the mill and I start them in the hot water and cloths until I get them done. After that it is down to the sizing. 10

Q. Now, you say you have the hats from the mill? A. Yes.

Q. And how does it come from the mill? A. Well, it comes like a start—only a big body.

Q. A big body? A. Yes.

Q. What do you do with it? A. I start it.

Q. What do you do, work? A. I shrink it in the hot water by the machine. 20

Q. Do you roll it in anything? A. Yes, in a cloth.

Q. And you throw it in what? A. In hot water and then I roll in cloth and put in the machine.

Q. And what do you do on the machine? A. It shrinks.

Q. I mean what process do you use, how does it shrink? A. Oh, the shrinking?

Mr. Kraemer: Withdraw the question. 30

Q. What do you do with it on the machine? What kind of a machine is that? A. A start machine.

Q. Do you put the hat on anything? A. Yes, on a cloth.

Q. When did you first start to feel these shakes? A. Oh, I start before about two or three months. I started a little bit until I started to shake the whole body. 40

Jacob Rosen, the Petitioner—Direct.

Q. Did you go to a doctor? A. Yes, I go right away to Dr. Hoeler.

Q. What is this Doctor's full name? A. Francis Hoeler.

Q. Dr. William F. Hoeler? A. Yes.

10 Q. 811 South Eleventh Street, Newark, New Jersey? A. Yes.

Q. And after you saw Dr. Hoeler, who did you see? A. And after the Doctor started to give me medicines and drops, and the Doctor write a letter right away to the firm.

Q. To the Fishman Hat Company? A. To the Fishman Hat Company.

20 Mr. Kraemer: We served you notice to produce that letter, Mr. Giddes, have you got it?

Mr. Giddes: The only notice or letter I have from the doctor to the employer is, according to the information I have received, one of February 14th, 1927.

Mr. Kraemer: I offer that note as notice and it is to the notice that the petitioner himself testified to.

Mr. Giddes: I have no objection to that being made part of the record.

30 (Paper marked Exhibit P-1.)

Q. Now, after you saw Dr. Hoeler, did you see any other physician? A. I think on the seventeenth I saw Dr. Dowd.

Q. Seventeenth of what? A. The same month, December.

Q. December 17th, 1926. A. Yes.

Q. Where did you see Dr. Dowd, at his office? A. No, here at the Labor Department.

Jacob Rosen, the Petitioner—Direct.

Q. Did either one of these Doctors prescribe for you—give you any prescriptions? A. No, the doctor didn't give me nothing, only he tell me: "What doctor you go?" I tell him I go to Dr. Hoeler. He said: "All right. What he give you?" I tell him: "He give me drops and medicines."

10

Q. Did you spend any money for the drops and medicines that Dr. Hoeler prescribed for you? A. No, not by Dr. Hoeler.

Q. What do you mean, not by Dr. —? A. Dr. Hoeler gave me all his. I didn't give him money.

Q. Did any other doctor prescribe for you? A. Yes, the Company doctor.

Q. What is his name, Dr. Avidan? A. Dr. Avidan.

Q. When did he see you? A. I started to go to him I think in March.

20

Q. And who sent you to him? A. The Company sent me.

Q. And where did you see Dr. Avidan—at his office or here in the building? A. No, at his office.

Q. Did he prescribe for you? A. No, he prescribes this medicine and he gives me a lamp—electric—I don't know—

Q. Now, you have been treated by Dr. Hoeler, and you have been examined by Dr. Dowd and Dr. Avidan? A. Yes.

30

Q. Was there any other doctor? A. I was examined by the Doctor up here in the Labor Department up here, by Dr. Kessler.

Q. And when were you examined by him? A. By who?

Q. By Dr. Kessler? A. That is the last time. I think it is about eight—maybe ten weeks—I don't know.

40

Jacob Rosen, the Petitioner—Direct.

Q. Now, were you ever sick before like this, Mr. Rosen? A. No, I never had the shakes.

Q. Outside of the hatting business, did you have any other business or any other work? A. No.

Q. Are you employed in any other trade than the hatting trade? A. Why, in other shops in the
10 hatting trade.

Q. In other shops? A. Yes, before.

Q. Do you have any other trade? A. No.

Q. You don't do anything else for a living besides hatting? A. Yes.

Q. And when you go home at night you don't have any other work, do you? A. No.

Q. You don't do any other work at all? A. No.

Q. Now, when you quit how long did you work in Fishman's? A. Fifteen years.

20 Q. And worked regularly there? A. When I got work I work, yes.

Q. And what were you, a piece worker or a week worker? A. Piece work.

Q. How much did you make at the time that you quit? A. The time when I quit I made that time thirty-five dollars—only worked three days—four days.

30 Q. Now, you say you have been working about fifteen years for this Fishman Hat Company. What is your average wages for a period of a year? A. Average year I think it was about forty dollars.

Q. Now, outside of the shake, Mr. Rosen, what other condition did you feel when you quit working? Is that the only thing that bothered you, the shakes? A. Yes.

Q. What else did you have—anything else? A. No.

40 Q. Did you eat all right? A. No, I don't now. I eat little bit better. Before I can't eat nothing.

Jacob Rosen, the Petitioner—Direct.

Q. Why? A. I had no appetite—I don't know why.

Q. When did you lose your appetite?? A. I lost the appetite by the work.

Q. And did you have any pain? A. Oh, I had cramps—

Mr. Giddes: I object to this as leading. 10

A. (Continuing) I had cramps about four months here.

Mr. Kraemer: Well, it came out at the informal hearing. Can I get that record if your Honor please?

The Court: Well, it is no evidential. I don't know that it would serve any purpose. 20

Q. (Showing witness) Mr. Rosen, I show you some cash register checks from Petty's Pharmacy, and I ask you what you got these for? A. What I paid my money the Doctor sent me—Dr. Avidan sent me for the medicines, and he told me, "You will get back from the Company."

Q. And is that what you paid? A. Yes, sir.

Mr. Kraemer: Offer them in evidence, if your Honor please. 30

(Cash register checks marked Exhibit P-2.)

Q. Now, Mr. Rosen, have you paid your doctor? A. No, I didn't pay Dr. Hoeler. Dr. Hoeler sent bill before I go to Dr. Avidan—sent me a bill for one hundred—

Q. And has that been paid do you know? A. No, I don't know. I think that the Company didn't pay. 40

Jacob Rosen, the Petitioner—Cross.

Q. Did they give you any other doctor, The Fishman Hat Company? A. No.

Q. Did they tell you to use Dr. Hoeler? A. To get that doctor here in New Jersey—I don't know.

Q. When did they tell you that? A. When he sent a bill, Dr. Hoeler. At that time they told me:
10 "You go to Dr. Avidan."

Q. Did you go to Dr. Avidan after that time? A. After this.

Q. And before that time had the Fishman Hat Company given you any other doctor? A. No.

Q. Now, after they sent you to Dr. Avidan, you continued to go there? A. Yes. I go right away. By the same day I was by Dr. Avidan.

Q. Now, has the Company, the Fishman Hat Company, paid you any compensation? A. No. I
20 didn't have nothing.

Q. Now, you had a hearing before Referee Wagner, didn't you? A. Yes, I had it two or three times.

Q. And after that hearing did you receive anything? A. No, never—nothing.

Q. You haven't received anything until today? A. No.

Cross-examination by Mr. Giddes:

30 Q. You said you were in the employ of the Fishman Hat Company for a period of fifteen years? A. Yes, sir.

Q. And during that time were you doing the same kind of work that you were just before you left in December? A. Yes, I did the same work.

Q. You had been a starter during that entire period of fifteen years? A. Yes.

Q. Now, do you know through how many hands
40 this felt passed before it came to you for you to

Jacob Rosen, the Petitioner—Cross.

shrink? A. That is the first—I shrink the first. I was the first man and shrunk the bodies.

Q. Where did you get the felt from? A. From the mill—got a form machine.

Q. And the man who forms the hat gets it before you, doesn't he? A. Yes.

Q. And do you know who receives it before the man who forms the hat gets it? A. Before the man gets—they a mill fixes that stock—girls. 10

Q. And then when you get it what do you do with it, or what did you do with it? A. I start it. I take them bodies in the cloths in the hot water in the kettle.

Q. You dip them in a kettle of hot water? A. Yes.

Q. And you have been dipping felt in hot water in the making of hats this—— A. This thirty-three years. 20

Q. And that's all you dipped them in was hot water, is that right? A. Yes.

Q. Now, after you dipped the felt in hot water, then what did you do with it? A. Then I gave it away to the foreman.

Q. Did you do anything else before you gave it to the foreman? A. Well, I make it.

Q. You dip it in hot water—kettle of hot water first? A. I started—I had a size—18-22 at the time I give them off to the foreman. 30

Q. Now, you said on direct testimony something about putting the felt through rolls. Did you put the felt through rolls?

Mr. Kraemer—Didn't say any such thing—said that he rolled it on the machine.

The Witness: Put on machine.

Q. Well, now, did you put it on machine after you dipped it in the kettle of hot water? A. Be- 40

Jacob Rosen, the Petitioner—Cross.

fore, before I had it in hot water in cloths and after I put it on the machine.

Q. After it goes on the machine do you handle it again? A. I handle it again. I handle it five or six times.

10 Q. Now, when the felt went into the machine did it pass through any water or anything, any solution of any kind? A. Yes, the first time—foreman puts them in, too.

Q. Are there rollers on this machine? A. On the machine you got rollers.

Q. You had rollers? A. Yes.

Q. And when the felt passes through these rollers does it force the water out of it? A. When I got it through I throw them up from the water and I draw them out and I give them away to the
20 foreman.

Q. And the only thing you put the felt in was in hot water? A. In hot water. I work in the hot water shrinking.

Q. That's the only machine you worked at in the Fishman Hat Plant, is that right? A. Yes.

Q. You didn't do any other kind of work around there? A. No.

Q. Now, you say that you quit work on Decem-
30 ber 14th, 1926, do you know what day of the week that was? A. I don't know what—

Q. Yes, or no—do you know what day of the week it was? A. What day of the week? I think it was—

Q. What is it? A. I think it was Thursday.

Q. Do you know whether it was Thursday?
A. Yes.

Mr. Kraemer: I object.

40 Q. Now, at the time that you last worked for Fishman you still dipped felt in the kettles and

Jacob Rosen, the Petitioner—Cross.

put it through the machine, is that right? A. Yes, I work—I make them down.

Q. What time of the day did you quit? A. Of the day?

Q. Of December 14th? A. I quit about eleven o'clock.

Q. Now, you say that you told Morris Fishman— A. Maybe before—maybe about ten o'clock. I didn't make only one dozen hats and then I went home. 10

Q. You say that you told Morris Fishman that you were going to quit. What did you tell Morris Fishman? A. I can't work.

Q. Just told him you could not work? A. Yes.

Q. You didn't know what was the matter with you, did you? A. I didn't know myself. 20

Q. So that you could not tell him? A. I could not work and I started to shake—the whole body.

Q. Did you ever go back to the Fishman plant and tell them anything about this? A. No, I didn't go back.

Q. You have never been back since? A. No.

Q. And have never spoken to the Fishmans about this at all? A. No.

Q. Never spoken to the Foreman about this? A. No, sir.

Q. You don't know when the Fishmans first learned anything about your claim of suffering from mercury poisoning, do you? A. Yes, the Labor Department called up Fishmans and told them. 30

Q. You don't know when they called or anything about it, do you? A. Yes, I know it was maybe about five weeks, six weeks—I don't know.

Q. You don't know exactly. You didn't call them up yourself? A. No, I didn't call them up. 40

Jacob Rosen, the Petitioner—Cross.

Q. Do you know what the Labor Department told the Fishmans? A. Yes, I know the Labor Department told the Fishmans is another accident—this industrial poisoning.

Q. Who told them that? A. Here in the Department. I don't know who it was.

10 Q. You don't know who it was? A. No.

Q. You don't know how long it was after you quit work? A. Oh, I don't—I know how many weeks is.

Q. Well, was it after you—before or after Dr. Avidan started to treat you? A. Dr. Avidan started to treat me after Dr. Hoeler, when the Company sent me to—

20 Q. Did the Labor Department call up the Fishmans before Dr. Avidan treated you or after Dr. Avidan started to treat you? A. Before.

Q. You don't know who they got on the wire, do you? A. In the Fishman's?

Q. Yes. A. I don't know who got on the wire.

Q. Now, did you ever ask anyone in connection with the Fishman Company to furnish a doctor before Dr. Avidan was supplied. A. No, I didn't ask nothing. I went to the doctor and the doctor write a letter right away.

30 Q. Dr. Hoeler? A. Dr. Hoeler, yes.

Q. Now, Dr. Hoeler was your attending family physician? A. I don't know what you mean.

Q. Was Dr. Hoeler your family physician—did he treat your family before? A. Yes, treat before.

Q. And you knew about him because he was your family physician? A. Yes. I went to him before. I knew him.

40 Q. You didn't ask anyone for medical treatment until Dr. Avidan was furnished? A. Yes.

Jacob Rosen, the Petitioner—Cross.

By Mr. Kraemer:

Q. Mr. Rosen, when you told Morris Fishman that you were sick, did you tell him what was the matter with you? A. Yes——

Mr. Giddes: I submit he has answered that, your Honor. 10

A. I said "The Doctor said this was mercury poisoning."

Q. You had been to the Doctor before? A. Yes.

Q. Did he tell you not to go to that Doctor? A. Who?

Q. Mr. Fishman? A. No.

Q. Did he tell you he was going to get you another Doctor? A. No.

By Mr. Giddes: 20

Q. When was the first time that you said anything to Mr. Fishman about mercury poisoning? A. Oh, that's after when I knew here, when the doctors told me.

Q. Not until after you came up here and found out from the doctors here? A. The doctors told me it is mercury poisoning. I don't know——

Q. How long after you quit work? A. I quit work the fourteenth of December.

Q. How long after you quit work did the doctors first tell you you had mercurial poisoning? 30
A. On the seventeenth of December Dr. Dowd told me.

By the Court:

Q. Doctor who told you? A. Dowd.

By Mr. Giddes:

Q. The seventeenth of December was the first time you knew you had mercurial poisoning? A. 40

Jacob Rosen, the Petitioner—Cross.

Yes, Dr. Dowd told me. I heard him say to the doctor: "Doctor, the whole body is poisoned."

Q. Have you seen Morris Fishman since December 17th, 1926? A. No, I didn't see him.

Q. And have you seen him at all since December 17th, 1926? A. No.

10 Q. Then you didn't tell him anything about mercury poisoning? A. No, I didn't tell him nothing. The Doctor told me——

Q. You didn't see Dr. Hoeler until after you quit work, did you? A. I saw Dr. Hoeler when I quit work.

Q. After you quit work? A. Yes.

By the Court:

20 Q. Was it after you left there or before? A. No, when I left the work.

By Mr. Kraemer:

Q. When you left the work you went to Dr. Hoeler. What did he say was your trouble? A. He didn't say me nothing. He gave me medicine.

Q. Who sent you to Dr. Dowd? A. He sent me Labor Department and I came here one day. I was for the doctor. On the third day I think he was here and he examined me, and he said the whole body is poisoned.

30 By the Court:

Q. Who examined you here? A. Dr. Dowd.

Q. Dr. Dowd examined you here? A. Yes, this place.

By Mr. Kraemer:

Q. That was three days after you had left the shop?

40 Mr. Giddes: I object to that.

A. The seventeenth.

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Q. No, when you quit on the fourteenth, did you inform them that you were going to quit the job?

A. No, I didn't know nothing. I couldn't work. I quit.

Q. Did you ever tell Mr. Fishman that you couldn't go back to work? A. Yes.

Q. When? A. I didn't tell Fishman nothing. When I couldn't work I quit work. 10

Q. Did you tell him why you couldn't work? A. Yes.

Q. Why? A. Because I started the shakes.

Q. Did you know what it was? A. No, I didn't know what it was.

Q. What did you call them? A. That's what the doctors told me.

Q. Do you know what the Hatters' Shake is? 20

Mr. Giddes: I object to that.

Q. When did you first start the shakes? A. About two or three months and then I quit work.

Q. How much did you suffer from it then—was it as bad as when you quit work? A. Oh, I suffered very bad. I lay in bed and it threw me up from the bed.

Q. Did you tell Fishman what your trouble was? A. Yes.

Q. What did you tell him? A. I told him it is mercury poison. 30

Q. When did you tell him that? A. When Dr. Dowd examined me.

Q. About how long after that did you tell him? Dr. Dowd examined you and told you that you had mercury poisoning? A. Yes.

Q. Did you speak to Mr. Fishman after that? A. No, I didn't talk to Fishman.

Q. Who did you tell that you have mercury poisoning? A. Dr. Dowd. 40

Emanuel Rosen, for Petitioner—Direct.

Q. Did you tell anybody that you had mercury poisoning? A. I didn't tell nobody.

Q. How did Fishman know that you had mercury poisoning? A. Why, Labor Department.

By the Court:

10 Q. How do you know? A. I heard him calling him up on the telephone, and they told him.

Mr. Giddes: I object to anything that was said over the telephone.

Q. How soon after Dr. Dowd examined you did the Labor Department call up? A. About five weeks after. The Company didn't pay me weekly wages and I came here and I wanted my weekly wages.

20 Q. Don't you know who called up? A. Here in the Labor Department. I don't know the man. I think the Commissioner——

Q. Mr. Wegner? A. Yes, Mr. Wegner. He knows. I was by him three times.

EMANUEL ROSEN, sworn as a witness on behalf of the petitioner, testifies as follows:

30 *Direct Examination by Mr. Kraemer:*

Q. How old are you? A. Twenty.

Q. You are the son of the petitioner in this case? A. Yes, sir.

Q. When did you first notice that your father was getting sick? A. Well, about two or three months before he quit work.

Q. Now, do you know when he quit work? A. Yes, sir.

40

Adam German, for Petitioner—Direct.

Q. Did you ever see anybody in the Fishman Hat firm about your father? A. Yes.

Q. When was that? A. That was about two weeks after he quit work.

Q. What did you do? A. I brought a letter to the Fishman Hat Company from the Compensation Bureau. 10

Q. And who did you give it to? A. I think it was Morris Fishman.

Q. And did you tell him anything about him? A. Yes, I told him my father was suffering from mercurial poisoning.

Q. Did you tell him where that letter came from? A. Yes, I told him it was from the Compensation Bureau.

Q. You told him that your father was suffering from mercurial poisoning? A. Yes. 20

Q. That was two weeks after he quit work? A. Yes.

Q. Did your father before ever have this kind of trouble? A. No.

Q. Does he do any other work besides this hat work? A. No, sir.

ADAM GERMAN, sworn as a witness on behalf of the petitioner, testifies as follows: 30

Direct examination by Mr. Kraemer:

Q. How old are you? A. Sixty-seven.

Q. What is your address? A. 120 Linden Avenue, Irvington.

Q. What business are you in? A. Hat business.

Q. As a journeyman or manufacturer? A. Doing for myself now. I was a journeyman for forty-odd years. 40

Adam German, for Petitioner—Direct.

Q. How long have you been in business for yourself? A. Five years.

Q. What particular branch of the business are you in? A. Dyeing business now.

Q. And before you went into the— A. Foreman of the J. Manual Co.

10 Q. That was one of the biggest hat factories in town? A. Well, I believe so—one of the oldest.

Q. What department were you foreman of? A. Making department.

Q. Are you familiar with the processes through which the hat making trade goes? A. I am.

Q. Tell us how that hat is started, will you please? A. Well, first it is mercury and quick silver applied with a brush on the skin.

20 Q. What kind of skin? A. Rabbit skin.

Q. What is mercury used for? A. Take the animal grease out of the fur so it shrinks. Without that you could not make a hat out of the fur.

Q. Do you dip it in solution? A. Yes.

Q. In what solution do you dip it? A. Mercury and quick silver.

30 Mr. Giddes: Objected to as absolutely irrelevant—doesn't apply to this particular firm, and it is shown that this particular manufacturer used no mercury whatever. I believe it is incompetent.

Q. After the hair is removed from the skin, what is done to it, Mr. German? Put in boxes and put in cases. Used to lay three months, and now I believe they have it one day and they use the next—

Mr. Giddes: I object to anything he believes if he don't know.

40 The Witness: I know all about it.

Adam German, for Petitioner—Direct.

Q. After it is packed where is it sent to? A. To the various hatters.

Q. What do they do with that stuff? A. Lay it out in mixtures—whatever way they want to make a hat; put on a blowing machine to draw up the form—hairs blown on a copper cone; dipped in hot water, and from there it goes to the starter, what this man did. 10

Q. What does he do? A. Dipped in hot water, thrown on a machine—that machine takes the place of hand work. It is done faster.

Q. What did this do? A. Shrinks it.

Q. And then it goes to where? A. Sizing machine.

Q. To what kind of hats does that apply to? A. All felt hats. 20

Q. Is there any other way by which the hair is removed from the rabbit skin than by the process you have just described? A. Not that I know of.

Q. How long have you been in business? A. Forty-eight years.

Q. Do you know the Fishman Company? A. Yes.

Q. Do you know what kind of hats they handle? A. Seen some of the hats.

Q. And what kind of hats do they handle? A. Fairly good grade. 30

Q. Felt hats? A. Felt.

Q. How long have they been in business to your knowledge? A. I could not say. Been in business a good many years—I could not say.

Q. Now, is there any other source of supply of these felt bodies than this supply which uses the mercury for the purpose of removing the hair from the skins? A. Not that I know of.

Q. Where are these factories located from which you get the hair stock? A. Most of the 40

Adam German, for Petitioner—Cross.

hair comes from Belgium. They got a lot of skins here in Brooklyn and New York, I believe.

Q. In any of these places do they use any other method than the mercury method in removing the hair? A. Not that I know of.

10 *Cross-examination by Mr. Giddes:*

Q. You have never been in the employ of A. Fishman Hat Company? A. No, sir.

Q. So you cannot state positively as to just what their process might be? A. Their process, I don't believe, is any different from anybody else. The only thing that makes hats is hot water, and they cannot use anything else. That's the only thing that makes felt—hot water.

20 Q. Just hot water? A. Unless you remove this animal matter, and mercury is what they use, why, you might as well try to shrink an old rubber boot. It wouldn't do any good. The only process that I know of to make felt.

Q. That doesn't necessitate Fishman to use mercury, does it?

Mr. Kraemer: I object.

A. No, they don't use it. No, they don't use it.

30 By the Court:

Q. In other words, that process is done before it reaches the factory? A. Certainly. Before they buy the fur they don't know what is in it.

By Mr. Giddes:

40 Q. You are unable to say as to whether any of the fur that Fishman used in the making of his hats had undergone the process in which mercury

Bernard Hollander, for Petitioner—Direct.

is used? A. I don't believe he could make one unless it was used—him or anybody else.

Q. But you aren't positive? A. No—I know that they could not make hats without it.

10

BERNARD HOLLANDER, sworn as a witness on behalf of the petitioner, testifies as follows:

Direct examination by Mr. Kraemer:

Q. Mr. Hollander, where do you live? A. 22 Speedway Avenue.

Q. Have you been in the hatting trade? A. I have.

Q. For how long? A. Why, all my lifetime, might as well say, until the last year. 20

Q. And you are also, I believe, secretary of one of the hat unions located in town here? A. I am, yes, sir.

Q. Are you acquainted with the process of hat making? A. I ought to be.

Q. And you gained that from working in hats? A. Yes.

Q. Tell me how the hat is made—felt hat? A. To begin with the fur—the fur cutter when he receives the pelt, as we call it, they apply some- 30 times twice, sometimes once with mercury to release it and also to take out the oil that exists in the animal—not only that, but it is used so as to make the fur shrink. Then it is brought in; they pack it in bundles, five pounds—maybe more some- times, and then it is sold to the manufacturer. The fur cutter doesn't know who buys it. They have a certain supply and the first manufacturer who comes in they sell it and they send it out from 40

Bernard Hollander, for Petitioner—Cross.

there, and they sell it to the manufacturer, you, me, any manufacturer—have no special made fur. Then it is brought into the shop and it is blown in the blowing room, and after the blowing room it is brought into the mill and spread on a big apron with the suction of a fan on the bottom and
 10 blown on to a perforated cone. That is all in drying, and then it is sunk into a dipper of hot water and released right away, possibly from ten to fifteen seconds, and then the starter gets it.

Q. That cones makes the body? A. That cone forms the body. When it comes out from there it is what we call cylindrical—it makes it in shape, but it is all raw until the starter gets it—it is all raw, nothing but raw fur. You can pick it off with
 20 your nail.

Q. And it is sent to the starter? A. Yes.

Q. And after the starter gets it? A. He puts it in hot water, and until he gets that one—say that particular shape is 26, 26, 27—

Q. That's the size? A. That's the size. They run it down to 19, 22.

Q. That's starting, do you mean? A. They shrink it down to that degree.

Q. Are you acquainted with the Fishman Hat Company? A. I am.

30 Q. Do you know where they get their fur? A. Why, I believe not in any place in particular—buy from the general market.

Cross-examination by Mr. Giddes:

Q. You say the hat shop when they have this fur it is placed in a boiler, suction boiler— A. It is placed in a blowing room, I said, to take the dirt out.

Bernard Hollander, for Petitioner—Cross.

Q. And then it is placed over a suction fan?
A. Over a suction fan, yes, sir, that draws the fur in on that cone.

Q. And then it is removed from there and placed in hot water? A. After that it is—it is dipped not in hot water, it is dipped in luke-warm water, so that while the fur is dry the wind will blow it off. When it is wet it will hold together. 10

Q. There is no question but what it is water in which it is dipped? A. That's all. Sometimes I seen them put in a little glycerin at times and sometimes in gasoline.

Q. And after it goes to the starter and he again places it in hot water? A. And it is covered over with cloths, another form over that—otherwise the hot water would wash it off. 20

Q. There is nothing but water into which it is dipped at that time? A. Nothing but water.

Q. There is no mercury in that solution? A. No, sir.

Q. There is no mercury in either of the solutions it is dipped into up to the time it goes to the starter? A. No, sir, that is right. There is mercury in the fur, though.

Q. So that so far as the Fishman Hat Company is concerned there is no necessity for their using mercury, is there? A. Why the fur has mercury —no necessity for them to use any more. 30

Q. Isn't any answer—— A. No, because the fur already has mercury.

Q. But is there nothing that they do with the hat or with the fur which requires them to put mercury in any solution that they put the hat into? A. No, none that I know of.

Bernard Hollander, for Petitioner—Cross.

By Mr. Kraemer:

Q. Do you know what hatters' shake is? A. Yes, sir.

Q. What is it? A. By mercury that gets into the system.

10 Q. Of whom? A. The man that is working at it.

Q. Is that prevalent amongst hatters? A. It is, greatly.

Mr. Giddes: I object to that. I object to this witness testifying to that.

The Court: I will allow the question.

Mr. Giddes: The answer indicates that this man simply had a shake. I think we better strike out what it is due to.

20 The Court: The part as to what it is due to should be stricken out. He may testify to hatters' shake.

Q. How does that hatters' shake manifest itself? A. It does more to some than to others.

Q. What are the symptoms—what does the layman see? A. You become almost paralyzed and you cannot hold your hands up—why, we had several cases here last year of the same identical thing.

30 Q. Now, as a hatter have you observed people suffering from this thing—from this hatters' shake? A. Yes, sir.

Mr. Giddes: I have the statement compiled by the Danbury Register, if you care to look at it.

The Court: You may show it to Mr. Kraemer.

Mr. Kraemer: I object to it.

40 The Court: Well, we might agree there is such a thing as Hatters Shake.

Emanuel Fishman, for Respondent Direct.

Mr. Kraemer: You can go along with your case until we get the medical here.

Mr. Giddes: You are through so far as the facts are concerned?

Mr. Kraemer: Yes.

10

EMANUEL FISHMAN, sworn as a witness on behalf of the respondent, testifies as follows:

Direct examination by Mr. Giddes:

Q. Mr. Fishman, are you affiliated with the respondent in this case, A. Fishman Hat Company?

A. Yes.

Q. And what is your connection with that concern? A. Partner and manager.

20

Q. Do you remember the petitioner being in the employ prior to the middle of December, 1926?

A. I do.

Q. What was his employment? A. Starter.

Q. And what was his occupation? What was he doing as starter? A. You mean for me to explain what process of starting?

Q. Will you explain to the Court the processes through which the fur passes after it is received by your plant? A. After we receive the fur it is made up into a mixture and blown on a blowing machine and then weighed out and put on what we call a forming machine, a copper cone and suction applied and the hat blown on it and covered with hot cloths and dipped in hot water to hold the fur together, and after it is taken from the cone by a man who sorts the hats out and taken up to the starting room where Mr. Rosen was employed as starter and done the sorting operation.

30

40

Emanuel Fishman, for Respondent Direct.

Q. And after that where did it go? A. To the sizing room, another form of shrinking.

Q. How many people handle this fur before it comes to the starter, the one that was the occupation of the petitioner? A. Two men—that is, two parts of the work.

10 Q. You stated that it was dipped in water on two occasions, once prior to the time that the petitioner received it and then dipped in by the petitioner? A. No, that is once it was dipped in—once before the petitioner received it and then he dipped it again in his process.

Q. Did any of the solutions or water into which this fur was dipped have in it any mercury? A. No, sir.

20 Q. Do you use any mercury in your plant? A. We do not.

Q. Do you use any chemical of any kind in your plant? A. Well, once in a great while there is a little chemical put in that hardly makes any difference to anybody that handles it. In fact, you can handle that chemical in your hand and can't be injured.

Q. But you never use any mercury? A. No mercury.

30 Q. And you are sure that you had no mercury in any of the solutions into which this fur was dipped in by the petitioner? A. Yes. We put no mercury in any of our solutions.

Q. Do you know when the first notice of the petitioner's condition was given to the A. Fishman Hat Company? A. I don't recall the date, no, sir.

Q. Do you recall the month? A. Around December—really I am not quite sure what date it was on or really what month. If I was to look up my—

40

Emanuel Fishman, for Respondent Direct.

Q. What are you referring to? A. You mean the report that came from the doctor of the company notifying us that Mr. Rosen was sick?

Q. Did you receive any notice until the doctor of the company notified you? A. I personally did not, no, sir.

Q. Are you familiar with this case so far as your company is concerned? A. Only from reports, that's all. 10

Q. When you say that you received notice of the petitioner's condition from the doctor, what doctor have you reference to? A. I don't recall his name. I think it was from the insurance company—no, it was a private doctor.

Q. (Showing witness.) I show you exhibit P-1, signed by Dr. William F. Hoeler. Have you seen that exhibit before? A. Yes. Dr. Hoeler called up the office one day and explained over the phone the condition of Mr. Rosen, and I told him to send a letter to that effect and I, in turn, turned it over to the insurance company. 20

Q. And is this the letter from him? A. No, sir. It was a regular written form letter.

Q. There was another letter received from him? A. Yes, sir.

Q. (Showing witness.) Do you know whether this is the letter that was received? A. That's the letter I seen, yes. 30

Q. And what's the date of that letter? A. March 14, 1927.

Q. And how long before that letter was received did Dr. Hoeler telephone to you? A. Well, as near as I could arrive at it, Dr. Hoeler called up the office about six weeks after Mr. Rosen went what we call "Off shop", and I, in turn, inquired of the foreman when Mr. Rosen went off, and he said it 40

Emanuel Fishman, for Respondent—Cross.

was about six weeks ago, and after that I heard nothing more until several months after, when that letter came.

Q. Did you have any knowledge that he was suffering from mercury poisoning within six weeks after the day he left? A. I had no idea what condition he was in, but I told the doctor to make out a report, and I in turn would turn it over to the insurance company.

Q. You say about six weeks after he had quit work? A. About six or seven weeks after.

Q. Did you ever receive any written notice from the petitioner complaining that he had suffered mercury poisoning? A. I didn't see it. He may have sent it, but I didn't see it.

Q. Have you looked through your files to see whether you ever received any such notice? A. Every paper or any paper that we get in these compensation cases we turn right over to the insurance company. We hold back none of the papers.

Q. You don't keep any copy of it? A. No, sir.

Q. Is your father, Morris Fishman, in town at the present time? A. Yes, sir.

Cross-examination by Mr. Kraemer:

Q. Are you plant manager? A. Yes, sir.

Q. Your father is Morris Fishman,—what is his position there? A. Sort of general man around—takes care really of the dyeing end of the work.

Q. Has he got direct supervision over the department in which the petitioner was employed? A. Indirectly, yes.

Q. Are you sure you didn't receive any notice prior to the date of March 14th, or that your firm didn't receive any? A. The firm didn't receive any.

Emanuel Fishman, for Respondent—Cross.

Q. Telephone notice? A. The first notice I got over the telephone I told the doctor to verify that by letter and when I received the letter I turned it over to the insurance company.

Q. (Indicating.) Do you know this young man?
A. Yes.

Q. Have you seen him in your place? A. Once 10
or twice.

Q. When was that? A. About six—seven months ago—six months ago.

Q. In connection with what? A. Well, he came in one day and told me the condition of his father—that he was sick.

Q. Was that before or after you had received this doctor's letter? A. That was after.

Q. Now, you said that there was no mercury used in your solutions there in your plant? A. 20
We use no mercury at all.

Q. Did the stock contain any mercury? A. To our knowledge, it does.

Q. The stock contains mercury? A. You mean the fur—

Q. The fur stock? A. Well, it is really all different kind of names.

Q. Well, I mean is there any parts that do or any parts that do not? A. Some parts have and some parts haven't. 30

Q. Which parts haven't? A. Well, blown fur wouldn't have.

Q. How much of that do you use? A. Twenty percent.

Q. And eighty percent.— A. Is treated with mercury.

By Mr. Giddes:

Q. You don't treat fur with mercury? A. No, sir, we don't handle mercury at all. 40

Dr. H. Kessler, for Petitioner—Direct.

Mr. Giddes: That's our case so far as the facts are concerned.

Mr. Kraemer: I have here a letter received by this Bureau on January 16th, 1927. I will make this an offer and couple it up.

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"William Francis Hoeler, M.D.,

"808 South Eleventh St., Newark, N. J.

"New Jersey Department of Labor,

"J. C. Wegner, Referee:

"Mr. Jacob Rosen is under my care and treatment from December 14th, 1926, to date, suffering with mercurial poison (industrial disease), being unable to work with same.

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"Respectfully yours,

"William F. Hoeler, M.D.

"Newark, N. J., January 16th, 1927."

(Discussion.)

The Court: If we can agree that he was suffering from mercury poison, then the only question is the extent of disability.

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DR. H. KESSLER, sworn as a witness on behalf of the petitioner, testifies as follows:

Direct examination by Mr. Kraemer:

Q. Dr. Kessler, did you, in your official capacity, examine Jacob Rosen, the petitioner in this case? A. I did.

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Q. Will you please tell us what you found? A. Examined him in the clinic on December 15th, March 16th and on April 18th, and on these exami-

Dr. H. Kessler, for Petitioner—Direct.

nations I found him to be in poor general condition. He was anemic, showed puffiness around his eyelids; showed no lead or other occupational disease, more than in his tremors. He did show a gingivitis, a rash of the lining of the mouth. The most characteristic symptom that he presented was that of tremors of the muscles of his eyes and over his upper extremities, his hands. These symptoms, taken in consideration with the history he gave me, led me to diagnose his condition as one of chronic mercurial poisoning. 10

Q. What was the history he gave you? A. Gave me a history of being exposed to working as a hatter, as a sizer.

Q. As a starter? A. Starter, did you say? Starter or sizer. 20

Q. Did you come to any conclusion as to the extent of his disability? A. Yes.

Q. And will you tell us what this conclusion was? A. I believe he had at the last time I examined him a permanent disability of thirty-three and a third percent of total.

By the Court:

Q. Can you estimate the temporary disability? A. First time I examined him the extent of permanent disability would be my best judgment that the temporary disability period would be prolonged, but I could not say how long exposed, to use the term—the condition isn't a criterion. 30

By Mr. Kraemer:

Q. Can you give us any conclusion as to that?

Mr. Giddes: I object to "conclusion."

Q. Medical condition? A. The best I could do would be that the temporary disability would be 40

Dr. H. Kessler, for Petitioner—Cross.

prolonged, because of the chronic nature of the condition.

Q. Well, is there any way that you can tell how long, or is that a matter to be determined hereafter? A. Well, from the medical point of view, I would say that up to that time when his condition remained stationary under treatment—

Q. Yes? A. Now, I examined him in December, March and in April, and between—at the December examination I considered that at that time he was one hundred per cent. disabled. At the second examination in March I considered him thirty-three and a third per cent. disabled, and in April I considered him thirty-three and a third per cent. disabled, so that from April to March there was a stationary condition obtaining in this man.

Q. What was the date in March when you first determined that his permanent was thirty-three and a third per cent.? A. March 10th.

Q. Now, there isn't from a medical point a likelihood of that getting any worse, is there, Doctor? A. That is very difficult to say.

Q. When did you see the man after that, April 10th? A. April 28th.

Q. And he was then the same as on the previous examination? A. Yes.

Q. Have you seen him again? A. Not to examine him. I have seen him and passed him.

Cross-examination by Mr. Giddes:

Q. Your estimate as to permanency is in a way somewhat of a guess, is it not? A. Well, it is based on my best judgment of this man's physical condition, plus a large number of cases that have gone before me and following up those cases for a long period of time determining what they have done two, three, four, five years after they had their awards, which is part of my work here.

Dr. Morris S. Avidan, for Respondent—Direct.

Q. And it is probable, is it, that his total permanent will not exceed twenty-five per cent.?

Mr. Kraemer: Well, I object to that, if your Honor please. That doesn't constitute evidence.

The Court: Well, I will allow the question. 10

A. It would be my best judgment that a third of total with reference to disability of this man for the urgent pursuits of life is as near as I could estimate it, based on my experience and on his physical condition.

By Mr. Kraemer:

Q. Will you just put on the record your official position? A. I am medical director of the Rehabilitation Clinic. 20

Q. And in that position do you have occasion to pass on all cases— A. I don't pass on them. I examine them and make estimates of disability for the guidance of the referee and commissioner.

Q. How long have you held this position? A. Eight years as assistant director and one year as director.

DR. MORRIS S. AVIDAN, sworn as a witness on the part of the respondent, testifies as follows: 30

Direct examination by Mr. Giddes:

Q. You are duly licensed to practice?

Mr. Kraemer: I will admit his qualifications.

A. I am since 1911.

Q. Connected with any institutions? A. Compensation Bureau of New Jersey. 40

Dr. Morris S. Avidan, for Respondent—Direct.

Q. And you have been for how long? A. Ten years.

Q. Do you have occasion to specialize in treatment and examination of patients injured as a result of industrial accidents? A. I do.

10 Q. And did you have occasion to treat the petitioner in this case, Jacob Rosen? A. I did.

Q. And how long did you treat him? A. He came to me on March 23rd—March 22nd, to be exact. Made examination on March 22nd and started to treat him March 23rd, and I treated him until the twenty-fifth of this month.

20 Q. Doctor, did you make any diagnosis as to the condition from which he was suffering? A. Why, he had a tremor of hands, limbs, neck. He was highly neurotic. Then he gave a history of having worked as a hatter, and the first thing that entered my mind was the possibility of chronic mercury poison. But he had a typical neurosis—that is, all the limbs, all the faculties were in such a tension to a marked degree. In fact, when I first saw him he could hardly walk or sit still, and I had a great deal of difficulty in examining this man.

30 Q. You saw him last on March 26th? A. No, no—just a minute—July 28th. I got the record right here. He was here the day before yesterday—July 28th.

Q. And you saw him again in this court room today? A. Well, I just said hello to him. I didn't treat him or examine him.

40 Q. And there has been no difference in his condition? A. Marked improvement. When I first saw him I think the man was totally disabled. I think the man will tell you he has made a marked improvement. I don't know whether he did so or not.

Dr. Morris S. Avidan, for Respondent—Cross.

Q. Do you think the condition is one of a permanent character? A. I think he still has some effects of it. I think he still has some effects still present of the chronic condition.

Q. Have you opinion as to percentage of disability, if there is a permanent condition? A. Well, I have kept this man under observation since I treated him. I don't think he is entirely cured. I think there is some effect remaining. Now, as to percentage, that's something, of course— As I say, he has made a marked improvement, and I should judge at the present time the man is disabled probably—he is a man, he tells me he is fifty-five years old and he has been a hatter fifteen years. He hasn't got the intestinal trouble that he used to have, and his palsy, shaking, is sometimes not nearly noticeable. I should say about twenty, twenty-five per cent. of total is fair. 10 20

Q. Is that based on your experience? A. Well, my observation of this man. I have seen this man for several months, you know, from March 23rd until the twenty-eighth of July.

Q. There has been a steady improvement? A. Oh, yes. The man tells me he— I am satisfied he has made a marked improvement.

Q. In your opinion, his percentage would be twenty, twenty-five per cent.? A. Yes. I don't think he is entirely cured. I doubt very much if he will entirely be cured. 30

Cross-examination by Mr. Kraemer:

Q. You said that on your first examination you diagnosed his case as being mercury poison? A. Well, I thought it was on account of being a hatter.

Q. You haven't changed your opinion? A. I think from what I have read and learned, I think probably it is. 40

Dr. Morris S. Avidan, for Respondent—Cross.

Q. And you would diagnose it as mercury poison? A. When a man worked for fifteen years—

Q. The symptoms are those of mercury poison? A. Yes, they call it hatters' palsy.

10 Q. What do you think as to his temporary disability? A. I personally think the man ought to go about today, because the man has cooperated, he has been a very good patient, has done everything we asked him to, and while the improvement has not been as great in the last couple of months as it has been, there has been a marked improvement.

20 Q. On what do you base your estimate of twenty-five per cent.? I take the maximum figure because— A. General observation of the man.

Q. You say thirty-three and a third per cent. is wrong? A. I am just giving my personal opinion.

Q. It is liable to the thirty-three and a third? A. Yes, I am just giving you my personal opinion.

By Mr. Giddes:

Q. You say you watched this man pretty carefully during the course of your treatment? A. Yes.

30 Q. And when you say twenty—twenty-five per cent. of total permanent disability you mean— A. I am just giving you my opinion. I am not criticising anybody else. I am giving my opinion. I think in a case like that the doctors ought to have a conference. I think I should have been called in. I know as much about this case as anybody. I had this man six months under my care.

40 Q. And you think the permanent is twenty, twenty-five per cent.? A. I am entitled to my opinion. That's all I am giving.

Discussion.

Mr. Kraemer: We have one more physician, if the Court please, Dr. Dowd.

The Court: Does he estimate more than that?

Mr. Kraemer: He estimated thirty-three and a third. That's his findings for the informal.

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(Discussion.)

The Court: Suppose you enter it on the record that by stipulation and agreement of counsel, the testimony of Dr. Ambrose F. Dowd if he were here would be thirty-three and a third per cent. of total disability as the result of mercurial poisoning, based on his examination of April 28th, 1927.

Mr. Giddes: I would like to move for the dismissal of this petition on the ground that there has been a failure to prove that the mercurial poison suffered by the claimant, by the petitioner, is the result or is a compensable industrial disease. Our contention is that it is not compensable in view of the fact that the employer or respondent in the proceeding never used, made use of, any mercury or chemicals such as mercury or any chemical that would cause mercury poisoning in connection with its process in the making of hats in its plant.

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I also move for a dismissal on the ground that the written notice required by Section 22, Subdivision D, was not given in this particular instance. My statement in regard to that is based upon the fact that a note from the doctor did not constitute notice of an industrial disease derived from the occupation of this particular petitioner. It

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Discussion.

merely stated that the petitioner was suffering from mercurial poison and it did not state that it was from anything in the course of the employment, and I contend that the notice is not sufficient if it does not make such a statement.

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I also contend that the percentage of total permanent—

Mr. Kraemer: Is that on your motion to dismiss?

Mr. Giddes: No.

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The Court: Very well, dispose of the motion first. So far as the second part of the motion is concerned, I will take that up first. The Act simply says in paragraph A of Section 22: "Compensible occupational diseases shall not include any other than those scheduled below and shall include those so scheduled only when the exposure stated in connection therewith has occurred during the employment, and the disability has commenced within five months after the termination of such exposure."

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Now, the only thing we are concerned with at this juncture is that part of the paragraph which says, "when the exposure stated in connection therewith has occurred during the employment." It says nothing about the exposure having to be incident to any materials that are assembled at that time. It simply says "the exposure." Now, the testimony indicates that mercury is applied—a mercury solution is applied for the purpose of removing hair and accumulations, grease and oil, and that mercury is not used at all in the hat business as

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Discussion.

such. The mercury comes to them on the pelts when they are sold to the hatting industry. That is the testimony.

Now, then, the interpretation of the act, I take it to mean, that not only does it mean within that list of industrial diseases, antrax, lead poisoning, and so on—there are eight or nine of them, that these particular things have got to be used in the particular business at issue, that is, in the sense of handling these ingredients in the sense of assembling, but that if any one of these ingredients or poisons is on any of the materials that are used in the course of their work, that is sufficient. In other words, the testimony is that the petitioner in this case was using pelts that came to the manufacturer and which were in turn turned over to the petitioner in his particular specialty as starter, which means shrinking by application in hot water, and the testimony of the doctors being that he had mercurial poisoning and that he showed results of it in the shakes and palsy, I think the inference is very clear from that testimony that he must have got it at that particular establishment, and that he must have got it in that particular part of the employment that he was doing, and that further leads it down still more, that he got the particular poisoning, that is the mercurial poison, while he was handling these pelts, the poison or the mercury having been already on the pelts when they came to him and he was obliged to handle them in the course of his work. That is the whole situation.

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Discussion.

Now, then, as far as notice is concerned, the act simply requires that notice is given. I read that part of the act:

10 “Unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensible occupational disease, or unless the——” and by the way, I might mention that the petitioner testified that he was talking to Mr. Fishman and at the time he was speaking to him his hands were shaking. Now, there might be an implication that the information was conveyed to him personally, and particularly as he says that he had that palsy, tremor, two or three months before he left the employment. But I will pass that by. “—has contracted a

20 compensible occupational disease, or unless the employee or some one on his behalf, or some of his dependants, or some one on their behalf, shall give the employer written notice or claim that the employee has contracted one of said compensible occupational diseases, which notice to be effective must be given within a period of five months after the date when said employee shall have ceased to be subject to exposure to such occupational disease.” The notice must be given unless the employer has personal knowledge of it within five months after the employee was last subject to exposure in the particular establishment. Now, the son says—that is, Emanuel: “Two weeks after he quit work I brought a letter from the Labor Department to the effect that my father was suffering from mercurial poisoning.”

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Discussion.

The father states in his cross examination that "Dr. Dowd told me I had mercurial poisoning", and about five weeks later he came to the Labor Department and somebody here had telephoned that he had mercurial poisoning, but that, of course, is not written notice. 10

Then the petitioner testified: "I didn't call up Fishman about this, but the Labor Department called up Fishman and reported it was industrial poisoning. I don't know when it was but it was before Dr. Avidan started treating me. I didn't ask for a physician before they sent for Dr. Avidan." Now, the plain inference is that the respondent asked Dr. Avidan to treat him. Dr. Avidan diagnosed it as mercurial poisoning. 20

The son says that he brought a letter in which it said that his father had mercurial poisoning. "Two weeks after he quit work I brought a letter from the Department to them to the effect that he was suffering from mercurial poisoning."

Now, they had that letter, according to the testimony of Emanuel, Rosen's son, two weeks after he quit work, and some time later while he is under treatment of Dr. Hoeler he is told that Dr. Avidan is going to treat him. In other words, they noticed this condition and sent him to their own doctor. 30

Now, then, if they got a letter from a doctor or from somebody that this particular employee is suffering from mercurial poisoning, I don't see that the act requires 40

Discussion.

10 more, and certainly the Fishman Hat Company or any hatter would immediately jump to the conclusion that possibly it came from their employment, because that is the particular thing they would look out for—that is the one particular thing that they use in the preparation of furs for hatting, they don't use any other.

So I should say that the petitioner has satisfied the requirements of notice within five months.

20 The only other thing is the question of disability. Dr. Dowd gave an estimate in March or April. Dr. Kessler saw him last in April. Dr. Avidan lays great stress upon the fact that he has greatly improved after he treated him, the inference is that he improved progressively and steadily to some extent. Then again, the matter of estimate is very apt to be conflicting. Ordinarily, people vary. I feel the interests of the petitioner are safe-guarded in this, that if there is really a condition there that gets worse he can very readily come in and have it re-opened as far as any total disability is concerned, and then if you take the temporary disability up to date, which I think is logical, and take twenty-five percent, which I think is a happy medium between all these estimates—after all, twenty-five and thirty-three are not wide apart, but there is no other testimony here, so between the two there is not very much difference. If he changes—my impression is he will either do one or the other—either get better or get worse as time goes on. Dr. Avi-

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Discussion.

dan says he has got along so well. 125 weeks, twenty-five percent total.

I think he is entitled to medical expenses, so you may make an itemized bill and send it in.

Counsel fee \$200.

Mr. Giddes: Note my exception to the award. 10

I HEREBY CERTIFY that the foregoing is true and accurate transcript of the testimony taken in the above-entitled matter at the time, place and date hereinbefore mentioned. 20

PETER O. BYRNE,
Stenographer.

I HEREBY CERTIFY that the foregoing is a true and accurate transcript of the testimony taken before me in the above-entitled matter, at the time, place and date hereinbefore mentioned. 30

HARRY J. GOAS,
Deputy Compensation Commissioner.

Exhibit P-1.

William Francis Hoeler, M. D.
808 South Eleventh St., Newark, N. J.

New Jersey Department of Labor

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J. C. Wegner, Referee:

Mr. Jacob Rosen is under my care and treatment from December 14, 1926 to date, suffering from mercurial poison (industrial disease), being unable to work with same.

Respectfully,

William F. Hoeler, M. D.

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Opinion of Supreme Court.

NEW JERSEY SUPREME COURT,

No. 262. MAY TERM, 1928.

<p>A. FISHMAN HAT COMPANY, INC., Prosecutor,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">JACOB ROSEN, <i>et al.</i>, Respondents.</p>	<p>10</p>
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Submitted May 10, 1928: Decided June 22, 1928.

ON CERTIORARI.

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Before Justices MINTURN, BLACK and CAMPBELL.

For the prosecutor, EMIL NEBLO.

For respondents, KRAEMER, SIEGLER AND
 SIEGLER.

Per Curiam.

Jacob Rosen filed a petition with the New Jersey Department of Labor, Workmen's Compensation Bureau, for compensation for disability resulting from mercury poison contracted during his employment with the prosecutor. After answer filed and hearing the Compensation Bureau made an order awarding compensation. Upon appeal to the Essex Common Pleas Court that tribunal affirmed such order and this writ brings up for review such order and proceedings. 30

The first reason for reversal is that the supplement to the original compensation Act of 1911, 40

Opinion of Supreme Court.

Chap. 95, P. L. 1924. Chap 124 is unconstitutional because the original act applies to accidents only and the supplement of 1924 applies to occupational diseases without change or amendment of the title of the act.

10 We find this to be without legal substance or merit.

The original act, by its title, related to "injuries" not "accidents". Injuries, we think is sufficiently broad to cover disability from both accident as well as occupational disease. The cases cited by prosecutor are not applicable because either their titles or context limit the recovery to injury through accident.

20 The second reason is that the act of 1924, *supra*, is unconstitutional because it attempts to amend the original act of 1911, *supra*, without reciting in full the sections attempted to be amended.

But this is not so. The act of 1924 is not an amendment of any part of the original act but by its title and context is in fact a supplement thereto, adding a right of recovery for occupational diseases.

30 The third reason is that assuming that the act of 1924 is an independent piece of legislation, then the Compensation Bureau was without jurisdiction because such act makes no provision therefor.

Such assumption however is without any legal foundation because as we have before found the Act of 1924 is not a separate and independent act but a supplement to the original Act of 1911.

The fourth reason is that the petition charges an "accident" and the allowance was for an occupational disease.

40 The answer is that these proceedings are informal and such mis-statement is cured by the answer

Opinion of Supreme Court.

filed by the prosecutor and by the fact that the cause was heard by the Deputy Commissioner and by the Common Pleas Court upon the theory of disability caused by occupational disease.

The fifth reason is that there was no evidence upon which to base a finding that the disease grew out of and arose in the course of employment. 10

We find, however, that there was such evidence. The prosecutor argues that it did not use lead or mercury in its factory but there was proof that a large percentage of the stock from which it manufactured hats required the use of mercury or quicksilver in their production and preparation.

The sixth reason is that the finding and judgment are not sufficiently specific.

We find no legal or factual merit therein. The final reason is that there was a failure of notice to the prosecutor as employer. 20

The proofs show that there was notice from the examining physician which in our judgment was sufficient to satisfy the requirements of the statute.

The proceedings and judgments under review are affirmed and the writ of certiorari dismissed, with costs. 30

Order of Affirmance.

(Filed June 27, 1928.)

NEW JERSEY SUPREME COURT.

10	A. FISHMAN HAT COMPANY, INC., Prosecutor, <i>vs.</i> JACOB ROSEN, <i>et als.</i> , Respondents.	}	On Certiorari. ORDER OF AFFIRMANCE.
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20 The Court having inspected the transcript of the determination and judgment, together with all proceedings for the making of the same, and all things touching and concerning the same, the Court of Common Pleas in and for the County of Essex, returned with the Certiorari in this cause, the reason for reversing said judgment and determination, and having heard the argument of Emil Neblo, of counsel for the Prosecutor, and Kraemer, Siegler & Siegler, of counsel for the Respondents, and having duly considered the same, do

30 ORDER, that the judgment and determination of the said Court of Common Pleas in and for the County of Essex be and the same is hereby affirmed, and the Writ of Certiorari dismissed, together with costs, and the record be remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered June 27, 1928.

40 On motion of

KRAEMER, SIEGLER & SIEGLER,
 Attorneys of Respondents.

Notice and Grounds of Appeal.

(Filed Sept. 5, 1928.)

NEW JERSEY SUPREME COURT.

<p style="text-align: center;">A. FISHMAN HAT Co., INC., Prosecutor-Appellant,</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">JACOB ROSEN, <i>et al.</i>, Defendants-Appellee.</p>	}	<p>On Certiorari.</p> <p>NOTICE AND GROUNDS OF APPEAL.</p>	<p>10</p>
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*To the defendants, or
Kraemer & Siegler, attorneys:* 20

TAKE NOTICE that the prosecutor appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the above entitled cause, upon the following grounds:

1. The Supreme Court erred in affirming the judgment of the Essex County Common Pleas which affirmed the judgment of the New Jersey Department of Labor, Workmen's Compensation Bureau, wherein an award of compensation was made to the defendant, Jacob Rosen. 30

2. The Supreme Court erred in affirming the said judgment of the Essex County Common Pleas, for that the Workmen's Compensation Bureau and said Common Pleas Court were without jurisdiction to entertain the petition for compensation and to make an order for compensation because, by virtue of the provisions of the Act under which the said petition was filed the petitioner therein 40

Notice and Grounds of Appeal.

did not sustain an injury by accident arising out of and in the course of the employment, and for that it did not appear by the evidence that the petitioner sustained an injury by accident arising out of and in the course of the employment.

10 3. The Supreme Court erred in affirming the judgment aforesaid for that it did not appear by the evidence that the petitioner contracted mercury poisoning while in the employ of the respondent, nor that mercury poisoning is a disease liable to be contracted in the petitioner's occupation, nor that the exposure occurred during the employment, and that the disability commenced within five months after the termination of such exposure.

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4. The Supreme Court erred in affirming the said judgment for that it did not appear by the evidence that the employer furnished, used and made use of mercury or any chemical whatever in its plant in the manufacture of hats or for any other purpose, nor did it appear by the evidence that in performing his duties the petitioner used or made use of mercury or any other chemical which would cause the petitioner to suffer from mercury poisoning or any other poisoning, nor did it appear by the evidence that the duties of the petitioner were such as to subject him to any occupational disease, nor did it appear by the evidence that the employer had notice or knowledge that the petitioner had contracted mercury poisoning while in the employment, nor did it appear by the evidence that written notice or claim was given the employer that the petitioner had contracted mercury poisoning or any other compensable occupational disease.

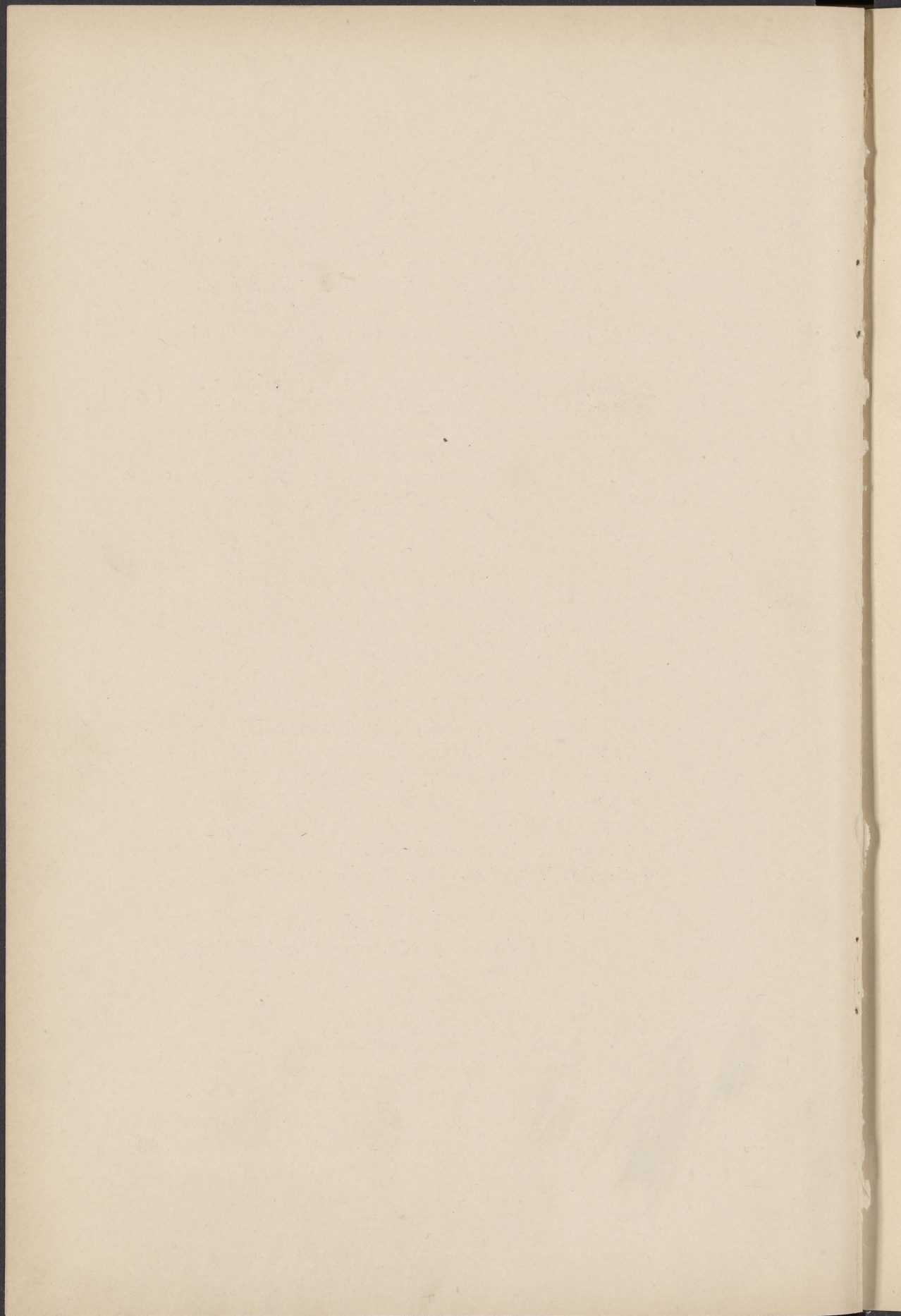
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Notice and Grounds of Appeal.

5. The Supreme Court erred in affirming said judgment for that An Act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation", Chapter 95, P. L. 1911, as amended and supplemented, is unconstitutional because it embraces more than one object and it violates sub-division 4, section VII of the New Jersey Constitution. 10

6. The New Jersey Supreme Court erred in affirming said judgment for that An Act entitled "A supplement to an Act entitled an Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder, approved April 4, 1911, being Chapter 124, P. L. 1924 as amended, is unconstitutional because it embraces an object which is not expressed in its title, and violates sub-division 4, Section VII of the New Jersey Constitution. 20

EMIL NEBLO,
Attorney of Prosecutor-Appellant. 30



New Jersey Court of Errors and Appeals

A. FISHMAN HAT Co., INC.,
Prosecutor-Appellant,

vs.

JACOB ROSEN, *et al.*,
Defendants-Appellees.

On Appeal from
Supreme Court

ON
CERTIORARI.

BRIEF OF PROSECUTOR-APPELLANT.

Statement.

A petition was filed by Jacob Rosen with the New Jersey Department of Labor, Workmen's Compensation Bureau, praying for compensation for disability resulting from mercury poisoning contracted during his employment. An answer was filed, and after a hearing before the Workmen's Compensation Bureau, an order was made awarding compensation to said Rosen. An appeal from said award was taken to the Essex Common Pleas and after hearing the parties, the Court affirmed (without opinion) the award made by the Workmen's Compensation Bureau. The Supreme Court upon the application of the prosecutor allowed a writ of certiorari to review said proceedings and award and thereafter affirmed the judgment of the common pleas and dismissed the certiorari. The prosecutor now appeals to this Court from the whole of the determination by the Supreme Court, and the matter now comes before this Court by virtue of said appeal.

POINT I.

The Act under which compensation was awarded is unconstitutional because it embraces more than one object, and it embraces an object which is not expressed in its title. Its conflicts with the constitutional inhibition contained in Subdivision 4 of Section VII of the New Jersey Constitution which provides that every law shall embrace but one object, and that object shall be embraced in the title and that no law shall be revived or amended by reference to its title only, but the Act revived or the section or sections amended shall be inserted at length.

In the year 1911 the Legislature passed an Act entitled "An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder" (P. L. 1911, Chap. 95). The significant words in the title of that Act are: "prescribing the liability of an employer to make compensation *for injuries received by an employee in the course of employment.*" Section II of that Act is the section under which workmen receive compensation, and in order to entitle him to compensation he must receive a *personal injury by accident* arising out of and in the course of his employment. In the year 1924 the Legislature passed a supplement to the Act (P. L. 1924, Chap. 124). The title of the 1911 Act remained unchanged, but the 1924 Act sought to extend the provisions of the original Act by making compensation payable for certain so-called occupational diseases. In the year 1926 the Legislature, without changing the title of the original Act of 1911, nor that of the 1924

supplement, passed an amendment to the 1924 Act (P. L. 1926, Chap. 31.) This amendment sought to further extend the provisions of the original Act of 1911 by making compensation payable for other so-called occupational diseases.

The petition for compensation was filed with the New Jersey Department of Labor (Workmen's Compensation Bureau) praying for compensation because, it was alleged, the petitioner therein suffered from mercury poisoning contracted while in the employ of the respondent therein. Mercury poisoning was included in the 1924 supplement and the 1926 amendment as one of the occupational diseases for which compensation was made payable by an employer.

It is the contention of the prosecutor that the original Act of 1911 deals exclusively with injuries as distinguished from diseases, and by passing the 1924 supplement the Legislature added to the original act a new subject, namely, occupational diseases, while the title of the original Act remained unchanged and restricted the compensation to "*injuries* received by an employee likely to be contracted.

We have so far progressed in our daily conceptions of human ailments as to readily distinguish between an injury and a disease. It is not intended to convey the idea that disease following an injury is not compensable under the original act, but we do mean to strongly insist that an original injury is not the same as a disease. Justice Swayze in the case of *Smith vs. International High Speed Company*, 98 N. J. L. 574, apparently had this in mind. In that case a suit at law was instituted on the theory that while the plaintiff was in the employ of the defendant the plaintiff's bronchial tubes were filled with metallic substances producing a diseased and injured condition, and charged the defendant with failure to perform his

common law duty towards his employee. The defendant contended that the plaintiff was relegated to the rights given to an employee by the Workmen's Compensation Law. The Court refused to recognize this contention and Justice Swayze said: "The injury must refer to such causes as are subject to the statute. I think a disease, such as is described in the complaint, is not the result of an accident, and that a recovery for injuries therefrom is not confined to the Workmen's Compensation Act".

A similar constitutional objection was raised in the case of *Adams vs. Acme White Lead*, 182 Mich. 157, L. R. A. 1916 A. 283. There the Court had under consideration the question of whether the statute providing compensation in case an employee receives a personal injury arising out of and in the course of his employment could constitutionally include occupational diseases such as lead poisoning, where the title purports to provide compensation for accidental injuries. There is no material difference between our Act and the Michigan Act. The title of our Act is as follows:

"An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination and liability of compensation thereunder".

The title of the Michigan Act is as follows:

"An Act to promote the welfare of this State, relating to the liability of employers for injuries or death sustained by their employes, providing compensation for the accidental injury to or death of employes, and methods for the payment of the same, establishing an industrial accident board, defining

its powers, providing for a review of its awards, making an appropriation to carry out the provisions of this Act, and restricting the right to compensation or damages in such cases to such as are provided by this Act”.

Our Act “prescribes the liability * * * for *injuries* received by an employee”. The Michigan Act “relates to the *liability* of employers for *injuries* or death sustained by an employee”. In addition to such recital in its title the Michigan legislature made the title an index. But the scope of the title is neither narrower nor broader than the title and body of our own Act.

While the courts in Massachusetts have held that the word “injury” as used in the title of their Act is broad enough to cover an occupational disease, such holding cannot be used as an authority either for or against the contention of the prosecutor, because our courts have already held that prior to the supplement making certain occupational diseases compensable, there could be no compensation recovered under the act for occupational disease, and furthermore the Massachusetts Constitution does not contain a restriction on legislative enactments that every law shall embrace but one object and that object shall be expressed in its title. This particular restriction is peculiar to the constitution of our State as well as that of Michigan.

In the Adams case, *supra*, the Michigan court said:

“The Massachusetts decisions have no bearing for two reasons: One is that the titles of the respective acts differ materially; and the other reason is that Massachusetts has no such constitutional provision as ours”.

Under our Act, as well as under the Michigan Act, in order to recover compensation it is essential that there be a personal *injury* (a) by accident

arising (b) out of, and (c) in the course of the employment. *Bryant vs. Fissell*, 84 N. J. L. 72.

The Court in the Adams case said:

“We are of opinion that in the Michigan Act it was not the intention of the Legislature to provide compensation for industrial or occupational diseases, but for injuries received from accidents alone.

“If it were to be held that the Act was intended to apply to such diseases, it would, in so far as it does so, be unconstitutional, and in violation of Section 21 of Article 5 of the Constitution of this State which provides that ‘no law shall embrace more than one object which shall be expressed in its title’.

“That the Act if it were held to apply to and cover occupational diseases is unconstitutional in so far as it does so, is shown by the fact that the body of the Act would then have greater breadth than is indicated in the title.”

In *Miller vs. American Steel & Wire Co.*, 97 Atl. (Conn.) 345, it was held that under the Workmen’s Compensation Act giving an employee compensation for personal injury arising out of and in the course of his employment, an employee who worked in a room containing molten lead so that he contracted lead poisoning was not entitled to compensation because the Act did not include *occupational diseases*, since the words “personal injury” are used in the popular sense of a *bodily injury* sustained in the course of employment. It was likewise held in *Naud vs. King Sewing Machine Company*, 159 N. Y. Suppl. 910, that an accidental injury is clearly distinguishable from an injury in the nature of an occupational disease sustained in the course of employment, where, *from the inherent nature of the work*, disease is likely to be contracted.

The Court in the Adams case, *supra*, thought it advisable to keep in mind the conditions sought

to be remedied by the diverse Workmen's Compensation enactments which have been adopted by several of the states and in foreign countries, and said that the primary object has been for the enactment of what has been claimed to be more just and humane laws to take the place of the common law remedy for the compensation of workmen for accidental injuries received in the course of their employment, by the taking away and removal of certain defenses in that class of cases. The Court said:

“Manifestly the terms ‘personal injury’ and ‘personal injuries’ refer to common law conditions and liabilities, and do not refer to and include occupational diseases, because an employee had no right of action for injury or death due to occupational diseases at common law. Generally speaking only accident or accidental injuries gave a right of action. * * * It seems to us that the whole scheme of this Act negatives any liability of the employer for injury received from an occupational disease.”

Therefore, we have a legislative enactment with its title embracing one object, namely, to compensate for an injury, while its body embraces two objects, namely, compensation for a personal injury by accident and compensation for occupational diseases. Upon a perusal of the title one anticipates a subject dealing with injuries, while upon examining the Act with its belated supplement one discovers a subject dealing with personal injury by accident and also the subject of occupational diseases. Evidently the Legislature in passing the 1924 supplement had in mind that the subject of the original act differed materially with the subject of the supplement, because under Paragraph 22 (f) of the supplement it is provided that the provisions of the supplement *shall not*

apply to any claim for compensation for injury resulting from accident. Section II of the original Act of 1911 is the section under which compensation is awarded an injured workman through the medium of the New Jersey Department of Labor, Workmen's Compensation Bureau. That section deals exclusively with one class of cases, namely, *personal injury by accident arising out of and in the course of employment.* The 1924 supplement deals exclusively with occupational diseases and expressly excludes from its operation "any claim for compensation for injury resulting from accident". Thus we have a subsequent legislative enactment attempting to extend the scope and effect of the original act and embracing a new and distinct object without changing the title of the Act.

It is submitted that the Act of 1924 with its 1926 amendment is unconstitutional.

POINT II.

The Act of 1924 violates the Constitution in that it in reality amends the Act of 1911, and this it does by reference to its title only, and it does not insert at length the section or sections amended. Paragraph 1 of the 1924 Act provides as follows:

"Chapter 95 of the Laws of 1911 entitled 'An Act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,' approved April 4th, 1911, is hereby supplemented by adding to Section II of said Act the following paragraphs".

The Act of 1924 extends the scope and effect of the original Act of 1911 by referring to its title only, and is therefore unconstitutional.

POINT III.

If this Court should construe the 1924 Act to be an independent act and that reference to the original Act of 1911 is surplusage, then the prosecutor contends that the New Jersey Department of Labor, Workmen's Compensation Bureau, was without jurisdiction because under the law creating the Workmen's Compensation Bureau (P. L. 1918, Chap. 149) the Bureau has jurisdiction only of claims arising under the Act of 1911 and the acts amendatory and supplemental thereto. If the Act of 1924 is construed to be in effect a separate piece of legislation, then it is neither an amendment nor supplement of the 1911 Act. The Bureau is without jurisdiction and the petition should have been dismissed.

POINT IV.

Compensation should be denied because the employee did not sustain an injury by accident arising out of and in the course of the employment.

The theory upon which the claim petition was filed and compensation was sought, is that Rosen sustained *an injury by accident* on December 14th, 1926, during his employment. We refer to the claim petition for the questions and answers (p. 2):

“Did your employer have knowledge of your *accident*? Yes.

“Did you notify your employer of your *accident*? Yes.

“If so, on what date? December 17, 1926.

“What was your regular occupation, and what kind of work were you doing at the time of the *accident*? Machine hand in the starter department of the hat factory.

“When did the *accident* happen? December 14, 1926.

“Where did the *accident* happen? December 14, 1926, I was taken ill at the factory.

“What was the nature of the *accident*, and how did it happen? Mercury poisoning contracted by reason of the occupation in which I was engaged.”

This petition was signed and verified by Rosen (p. 5) and on this petition his claim was submitted to the Workmen's Compensation Bureau for determination. The answer filed on behalf of the employer was a complete denial of the matters set forth in the petition. The Bureau, however, found that Rosen was disabled on December 17, 1926 “by a compensable occupational disease, to wit, mercury poisoning”, and the Common Pleas affirmed this finding (p. 11). There is nothing in the testimony which affords a basis for a finding or determination that Rosen had sustained a personal injury *by accident* arising out of and in the course of the employment, and neither the Bureau nor the Common Pleas made any such finding and determination. Such being the case the claim petition should have been dismissed, leaving Rosen, if he so desired, to make further claims on some other theory. If he based his claim on the Act of 1924 which allows compensation for mercury poisoning, he should have filed a claim petition accordingly, because the Act of 1924 by Paragraph 22 (f) expressly excludes from the operation of the provisions of that Act “any claim for compensation for *injury resulting from acci-*

dent". This Act recognizes two classes of cases wherein compensation is payable, one being for *personal injury by accident*, and the other being for occupational diseases. The claim having been submitted under the first class and the proof failing to show a *personal injury by accident*, a dismissal should have been ordered, the Bureau being without jurisdiction under the petition as filed unless there be a personal injury by accident arising out of and in the course of employment.

POINT V.

If it be permissible to submit a claim to the Compensation Bureau on the theory of an injury by accident and at the hearing to proceed on the theory that the claimant suffered an occupational disease, then the prosecutor contends that Rosen has failed to show that he contracted an occupational disease during his employment. Under the Acts of 1924 and 1926, which make mercury poisoning a compensable occupational disease, the burden was placed upon Rosen to prove (1) a personal injury, (2) by mercury poisoning arising (3) out of and (4) in the course of the employment; and (5) that the exposure stated in connection therewith has occurred during the employment, and (6) that the disability has commenced within five months after the termination of such exposure. There are six essentials to warrant a recovery for compensation for a compensable occupational disease. The primary essential without doubt is to prove that the condition from which he suffers is an "occupational disease". Appended to this brief is a copy of the pertinent sections of the 1924 Act as amended by the Act of 1926.

The Ohio Supreme Court in *Industrial Com. vs. Roth*, 120 N. E. 172, 6 A. L. R. 1463, defines an "occupational disease" as a disease contracted in the natural and ordinary course of employment, by a person engaged in a particular calling or occupation, which disease from common experience is known to be a usual and customary incident to such calling or occupation. The Court further said that an occupational disease is not only a disease incident to a particular occupation but that it is a disease developed in the usual and ordinary manner *by reason of and because of the occupation in which the person suffering therefrom is or was engaged.*

In *Naud vs. King Sewing Machine Co.*, 159 N. Y. Suppl. 910, it was held that an accidental injury is clearly distinguishable from an injury in the nature of a vocational disease, sustained in the course of employment, where, *from the inherent nature of the work*, disease is likely to be contracted.

There is not a scintilla of evidence in the entire case that Rosen's occupation was of a nature that "by reason of and because of it" he contracted mercury poisoning. There is some evidence that there exists among "hatters" what is known as "hatters' shake". The case is barren of any evidence that Rosen in his particular calling or occupation was subject to "hatters' shake", or that by reason of and because of the nature of his occupation he contracted "hatters' shake", which according to one of the lay witnesses comes "by mercury that gets into the system of a man that is working at it", and is prevalent among "hatters" (p. 40). We proceed to examine the testimony to ascertain the nature of Rosen's calling.

Rosen testified (p. 19) that he worked in the "start" department, and his work consisted in starting the hats by placing them in hot water

and cloths. The felt comes from the mill, and the man who forms the hat gets it before Rosen, and Rosen takes them and places them in a kettle of hot water to be shrunk and then passed through a machine to press out the water (p. 25). The felts then go to the foreman (p. 26). He testified (p. 26):

“Q. And the only thing you put the felt in was in hot water? A. In hot water. I work in the hot water shrinking.

“Q. That’s the only machine you worked at in the Fishman Hat Plant, is that right? A. Yes.”

Rosen produced as a witness Adam German, who testified that he has been in the hat business for five years, and before going into business he worked in a hat factory as foreman of the “Making Department” (p. 34). He described the process through which hat making goes. Mercury and quick silver are applied with a brush to rabbit skin to remove the hair, and after the hair is removed the skin is put in boxes to be sent to various hatters. It is then put on a blowing machine to draw up the form; dipped in hot water, and from there it goes to the starter. Most of the hair stock comes from Belgium. He does not know of any other method than the mercury method in removing hair (p. 36). Under cross-examination this witness testified that he had never been in the employ of Fishman Hat Company, but he did not “believe” that their process is any different from anybody else; *that the only thing that makes hats is hot water, and they cannot use anything else. Fishman does not use mercury. The process of removing the hair is done before it reaches the factory* (p. 36).

Bernard Hollander, another witness called by Rosen, testified that he has been in the hatting trade and is acquainted with the process of hat

making. He also described the process used (p. 37). The starter dips into hot water—nothing but water into which it is dipped at that time. *There is no mercury in that solution.* There is no necessity for Fishman Hat Co. to use mercury (p. 39). This witness further testified (p. 40):

“Q. Do you know what hatters’ shake is?

A. Yes, sir.

“Q. What is it? A. By mercury that gets into the system.

“Q. Of whom? A. *The man that is working at it.*

“Q. Is that prevalent among hatters? A. It is, greatly.”

We here have the admission of a witness who claims to have been in the hatting trade all his life, that the only thing in which the felt is dipped is hot water, and that the starter dips it into hot water, and that *the man who is working at mercury* gets mercury into the system and has “hatters’ shake”.

It is admitted throughout the case that Rosen used nothing but hot water. There is no proof whatever in the case that Rosen as a “starter” was engaged in a calling or occupation by reason and because of its nature, he developed an occupational disease. If according to the lay witness the man who works at it (the mercury) gets mercury into the system and gets “hatters’ shake”, then Rosen certainly did not get mercury poisoning from his occupation—he did not work at, near, in or with mercury.

On behalf of the prosecutor testimony was adduced that mercury is not used at all in its plant, and is not in any of the solutions, nor is it in or on anything used by the employer in its business (p. 42). According to the employer its method was to dip the felt in water twice, prior to the time the starter receives it, and then by the starter,

and Rosen did not use mercury or work at, in, with or near mercury. This testimony on behalf of the employer remains uncontradicted.

There is no evidence in the case upon which to base a finding that Rosen's particular calling subjected him to an occupational disease such as mercury poison. This being so, compensation should be denied.

There is no testimony, expert or otherwise, that Rosen contracted mercury poison. There is no testimony that he contracted mercury poison in his particular occupation. The only medical testimony offered by Rosen came from Dr. Kessler, medical director of the Rehabilitation Clinic. This doctor testified (p. 47) that on his examinations he found Rosen to be in poor general condition and that he "*showed no lead or other occupational disease*". He found some symptoms which taken in consideration of the history given to him by Rosen "*led me to diagnose his condition as one of chronic mercurial poisoning.*" He already said that Rosen "*showed no lead or other occupational disease*", but on being given a history, he was "*led*" to diagnose the condition as chronic mercurial poisoning. The prosecutor contends that this sort of testimony does not amount to a definite opinion that Rosen contracted mercury poison—or that he contracted the disease in his particular calling. At best it is merely a conjecture, and this is borne out more clearly by the testimony of Dr. Kessler which follows (p. 47):

"Q. What was the history he gave you?

A. Gave me a history of being *exposed* to working as a hatter, as a sizer.

"Q. As a starter? A. Starter, did you say? Starter or sizer."

His testimony thus abruptly ended without there going into the record the doctor's definite

opinion. The furthest this testimony goes is to show a possibility that Rosen has mercury poisoning. "Where the doctors refuse to state that death was caused by the accident, there is no basis for an inference to that effect by the Court. The burden of proof is in accordance with the ordinary rule upon the petitioner". *Reimers vs. Proctor Pub. Co.*, 85 N. J. L. at page 443. If the doctor means to give it as his opinion that Rosen contracted mercury poison, then it is certainly evident that he is assuming facts which are not warranted. He was satisfied that Rosen "showed no lead or *other occupational disease*", but upon receiving a history of "being exposed to working as a hatter, as a sizer", he immediately concluded that Rosen had mercury poisoning as a result of that exposure? Now, what does this expert mean when he uses the word "exposed"? If we look at Section 22 (h) of the 1924 Act we find that "compensable occupational diseases shall not include any other than those scheduled below and shall include those so scheduled only when the *exposure stated in connection therewith* has occurred", etc. The doctor undoubtedly means and assumes that Rosen was "exposed" to mercury. There is nothing in the testimony to justify this assumption. In fact the contrary clearly appears. The doctor probably has heard or learned that hatters use mercury, and inasmuch as Rosen was employed in a hat factory, he concluded that Rosen was using mercury and his occupation "exposed" him to the effects of mercury.

Dr. Avidan, who was called on behalf of the prosecutor, indulged in this same assumption because he testified (p. 50) "he (Rosen) gave me a history of having worked as a hatter, and *the first thing that entered my mind was the possibility of chronic mercury poison*", and at page 51 testified:

“Q. You said that on your first examination you diagnosed his case as being mercury poison?”

A. *Well, I thought it was on account of being a hatter.*”

There is no testimony in the case from either lay or expert witnesses that Rosen's occupation was such that it subjected him to an occupational disease. Dr. Kessler said Rosen showed *no occupational disease*. He diagnosed it as “mercurial poisoning” after getting a history. It is not sufficient that he gets a disease while employed. It is essential that the disease from which he suffers is occupational—commonly known by experience to be a usual and customary incident to the *particular calling*, and the natural, usual and ordinary result thereof. *Industrial Com. vs. Roth*, 120 N. E. 172; 6 A. L. R. 1463. Unquestionably Rosen's particular calling did not “expose” him to mercury poisoning. Mercury was nowhere used in the plant. Rosen's work consisted in dipping the felt in hot water. No mercury was used by him, and no mercury was used in the hot water. How then can it be claimed that Rosen was exposed—that his particular calling carried with it mercury poisoning as a natural, usual and ordinary result thereof? If the inference be permissible, such inference must be the result of *proved facts*, and Rosen had the burden of proving such facts by a preponderance of evidence. In our opinion he has failed to prove or attempt to prove any facts from which the inference can be drawn.

If Rosen has surmounted that obstacle to his right to recover, then how can he be entitled to compensation without proof of the other essentials? The Act of 1924 prescribes the basis of the claim. He must receive a “personal injury by the occupational disease.” There is no proof that

he had a "personal injury" by an occupational disease or otherwise. He must receive a personal injury by the occupational disease "arising out of and in the course of his employment." This Court decided in *Bryant vs. Fissell*, 84 N. J. L. 72, that "the burden of furnishing evidence from which the inference can be legitimately drawn that the death of an employee was caused by an accident arising out of and in the course of his employment rests upon the claimant." Surely in the instant case Rosen had the burden of showing "a personal injury by the occupational disease arising out of and in the course of the employment." The testimony on this score consists of the statement by Rosen that he worked for Fishman Hat Co. for thirty-three years and quit on December 14, 1926, because he could not work, he had the shakes (p. 18). According to his petition (p. 2) he was taken ill at the factory on December 14, 1926. He did not have a "personal injury." For a personal injury by an occupational disease to arise out of and in the course of the employment, it must result from a risk incidental to the employment (*Bryant vs. Fissell, supra*). The words "out of" point to the origin and cause; the words "in the course of" to the time, place and circumstances under which the personal injury takes place. Where is there anything in the case from which the inference may be legitimately drawn that Rosen received a "personal injury by an occupational disease arising out of and in the course of the employment," excepting his bare statement that he worked thirty-three years and quit on December 14, 1926, because he could not work, and the testimony of his medical witness, based on an unwarranted assumption of fact, that Rosen is suffering from mercury poisoning? In the ordinary case of accidental injury under the compensation law the claimant is re-

quired to show more than merely an accident. *A fortiori*, should not Rosen show more than merely a so-called disease? When the legislature uses the words "personal injuries by the occupational disease", it intended to qualify and restrict the compensation to an occupational disease resulting in a personal injury, for otherwise the words "personal injuries" go for naught. The legislature no doubt did not intend to cover an occupational disease specified in the act without more. Has the claimant proven a personal injury by the disease? We insist not. The medical testimony is that he has a "disease." Personal injury is nowhere mentioned or intimated.

The question of the sufficiency of evidence in occupational disease cases has received the attention of courts in various jurisdictions. In *White vs. American Soc.*, 191 App. Div. 6, 180 N. Y. Supp. 867, the Court said:

"As to the second theory, that an anthrax germ attacked the deceased through an incision in the boil, there is no evidence that he contracted the disease in the course of his employment. *It does not appear that any of the animals with which he came in contact had anthrax.* No evidence was given as to the nature of anthrax, or as to the circumstances or conditions under which it attacks mankind. Because the deceased died of anthrax and because his employment was in connection with animals, the commission has concluded that a casual relation between his employment and death existed. *Such a conclusion is not justified in the absence of evidence establishing a causal relation.*"

Where a person who had worked as a printer for fifteen years became ill from lead poisoning and there was no evidence that lead fumes or dust are given off by type, or that the handling of type is liable to cause lead poisoning, the Court held

that there was no evidence to show that the lead poisoning was contracted in the employment. *Doherty's case*, 222 Mass. 98; 109 N. E. 887.

In the case *sub judice* it does not appear that any of the felts with which Rosen came in contact had mercury. There is no evidence given as to the nature of mercury poison, or as to the circumstances or conditions under which it attacks mankind. Because Rosen had mercurial poison and because his employment was in a hat factory, the Compensation Bureau and the Common Pleas concluded that a causal relation between his employment and the disease existed. There was no causal relation established or shown.

It is not true as stated by the Supreme Court in its opinion "that there was proof that a large percentage of the stock from which it manufactured hats required the use of mercury or quick silver in their production and manufacture." The testimony was as follows (p. 45):

"Q. Now you say that there was no mercury used in your solutions there in your plant? A. We use no mercury at all.

Q. Did the stock contain any mercury? A. To our knowledge it does.

Q. The stock contains mercury? A. You mean the fur——

Q. The fur stock? A. Well, it is really all different kind of names.

Q. Well I mean is there any parts that do or any parts that do not? A. Some parts have and some parts haven't.

Q. Which parts haven't? A. Well, blown fur wouldn't have.

Q. How much of that do you use? A. Twenty per cent.

Q. *And eighty per cent?* A. *It is treated with mercury.*

Q. You don't treat fur with mercury? A. No, we don't handle mercury at all."

So that it is clearly evident that the proof was not "that a large percentage of the stock from

which it manufactured hats required the use of mercury or quick silver in their production and preparation". The witness whose testimony is quoted simply gave it as his opinion that some fur stock has mercury and some has not, and that twenty per cent of the fur stock has no mercury, while "eighty per cent is treated with mercury". That is not the same as saying that the stock from which the prosecutor manufactured hats required the use of mercury or quick silver in their production and preparation. There is no evidence of the quantity of stock used by the prosecutor.

But aside from this contention there was no proof whatever that the particular felts that Rosen worked on or came in contact with in the performance of his duties had any mercury or quick-silver in or on them, or that they had been previously treated with mercury. To infer that he got mercury poisoning because some of the felts used by the prosecutor in the manufacture of hats had previously been treated with mercury is speculation. It amounts to an inference on an inference. It would have to be assumed that the felts with which Rosen worked or came in contact contained mercury or quick-silver or had been treated with such, and there is no proof whatever which would or could afford the basis for such inference.

The testimony by Rosen was as follows (p. 25):

"Q. And the man who forms the hats gets it before you do, doesn't he? A. Yes.

Q. And do you know who receives it before the man who forms the hats gets it? A. Before the man gets them a mill fixes that stock—girls.

Q. And then when you get it what do you do with it, or what did you do with it? A. I start it. I take them bodies in the cloths in the hot water in the kettle.

Q. You dip them in a kettle of hot water? A. Yes.

Q. And that's all you dipped them in was hot water, is that right? A. Yes."

From his own testimony it appears that the felts upon which he worked would pass through two other persons before he would receive them—the girls who fix the stock in the mill, and the man who forms the hat.

There was no testimony that any of the felts when they reached Rosen contained mercury or had been treated with mercury or quick silver. If the testimony had been that the felts used by Rosen contained or had been treated with mercury when they left the mill and Rosen was the first man to receive them in that condition, then it might well be that the inference could be drawn that the mercury poisoning came from those felts and a case under the statute may have been made out provided there was testimony also that Rosen's particular calling carried with it the risk of an occupational disease—a disease which is peculiar to such calling. But where, as here, there is not the slightest evidence that the felts of the prosecutor and particularly those with which Rosen worked or came in contact contained mercury or had been treated with mercury or quick silver, and that he was subjected in his calling to mercury poisoning as an occupational disease, the conclusion by the court that Rosen was disabled by a compensable occupational disease, to wit, mercury poisoning, and that the exposure thereto occurred during his employment, is the result of conjecture and speculation, and therefore erroneous.

In the White case, *supra*, the New York Court called attention to the failure to show that any of the animals with which the deceased came in contact had anthrax and that therefore the conclu-

sion that he died from anthrax contracted in his employment, was not justified.

So in the instant case there being no proof that the felts used by Rosen contained mercury and that his particular calling subjected him to the risk of mercury poisoning as an occupational disease, the court was not justified in reaching the conclusion which it did.

The claim petition should have been dismissed.

POINT VI.

The judgment of the Common Pleas should be reversed because its finding is not specific. Section 22(a) of the 1924 Act provides that "compensation for personal injuries to or for death of such employee by any of the compensable occupational diseases hereinafter defined arising out of and in the course of his employment shall be made by the employer." The Court below was bound to specifically find and determine that Rosen sustained a personal injury by a compensable occupational disease arising out of and in the course of his employment before making any award in favor of Rosen. The Court failed to find and determine those essential facts. There is no finding or determination that Rosen sustained a personal injury by an occupational disease and that it arose out of and in the course of the employment. The Court's finding and determination is to be found in the "second" part of the Judgment of Affirmance (p. 11) which recites: "That on the aforesaid date, the petitioner was disabled by a compensable occupational disease, to wit: mercury poisoning, and that the exposure thereto occurred during his employment, and that the disability commenced within five months after the

determination of such exposure." There is no finding that Rosen's occupation carried the risk of mercury poisoning as an occupational disease. The judgment should be reversed. "It is intended (by the statute) that the judgment in every phase shall be supported by a specific finding or fact which may be submitted to and considered by a court of review." *N. Y. Shipping Co. vs. Buchanan*, 84 N. J. L., at page 544; *Long vs. Bergen*, 84 N. J. L. 117; *Diskon vs. Bubb*, 88 N. J. L. 513.

POINT VII.

Compensation should be denied because the claimant has failed to comply with the requirements of Section 22(d) of the 1924 Act. This section provides that "*unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensable occupational disease, or unless the employer or someone on his behalf * * * shall give the employer written notice or claim that the employee has contracted one of said compensable occupational diseases, which notice to be effective must be given within a period of five months after the date when said employee shall have ceased to be subject to the exposure to such occupational disease, no compensation shall be payable on account of the death or disability by occupational disease of such employee.*"

There is no claim made that the employer "during the continuance of the employment" had actual knowledge that Rosen had contracted a compensable occupational disease. Rosen testified that he quit work because he could not work and he told the boss in the shop he was quitting (p.

18). He said: "I shake me—I cannot work" (p. 19). Reliance is placed by Rosen on Exhibit P-1 for a compliance of the statutory requirements that written notice or claim to the employer that the employee had contracted one of the compensable occupational diseases, must be given within a period of five months after the date when the employee shall have ceased to be subject to the exposure to such occupational disease. The prosecutor contends that Exhibit P-1 is not a compliance with the statutory requirement. That exhibit is merely a statement by a physician that Rosen was under his care and treatment suffering from mercurial poison and is unable to work. It is not addressed to the employer, Fishman Hat Co. It is not a written notice or claim to the employer that Rosen had contracted one of the compensable occupational diseases. It has no semblance of a *notice or claim*. The most that can be said about it is that it certifies that Rosen was under the care and treatment of a physician. The particular section of the Act must be read in connection with the other sections. The notice or claim must be given in writing to the employer that the employee has contracted a compensable occupational disease while in the employment, so as to place the matter unequivocally before the employer that a claim for compensation by reason thereof is or will be made. The ordinary employer would take Exhibit P-1 as a medical certificate that Rosen was ill and unable to work. It can hardly be said that it was a notice or claim that Rosen had contracted an occupational disease in the employment and that compensation would be sought. The prosecutor contends that the statutory requirement commands strict compliance, and that Exhibit P-1 falls short of such compliance. By the provisions of the Act no compensation shall be

payable unless the written notice or claim therein prescribed is given. Rosen having failed to prove compliance, compensation should be denied.

POINT VIII.

It is respectfully submitted that the determination and judgment of the **Essex County Common Pleas** should be reversed and for nothing holden.

EMIL NEBLO,
Attorney for and of Counsel with
the Prosecutor-Appellant.

The Act of 1924, as Amended by 1926.

A Supplement to an act entitled: "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder", approved April fourth, one thousand nine hundred and eleven, as amended by Chapter 31, P. L. 1926.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Chapter 95 of the Laws of 1911, entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder", approved April fourth, one thousand nine hundred and eleven, is hereby supplemented by adding to section II of said act the following paragraphs:

22 (a) When employer and employee have accepted the provisions of section II as aforesaid, compensation *for personal injuries* to or for death of such employee *by any of the compensable* occupational diseases hereinafter defined arising out of and in the course of his employment shall be made by the employer to the extent hereinafter set forth and without regard to the negligence of the employer.

22 (b) Definitions. When applicable in this act to occupational diseases the following words and phrases shall be construed to have the following meanings:

A. Compensable occupational diseases shall not include any other than those scheduled below and shall include those so scheduled only when the exposure stated in connection therewith has occurred during the employment, and the disability has commenced within five months after the termination of such exposure.

Occupational Diseases:

* * * * *

Mercury poisoning

* * * * *

B. Willful self-exposure to occupational diseases shall include (1) failure or omission to observe such rules and regulations as may be promulgated by said Department of Labor and posted in the plant by the employer, tending to the prevention of occupational diseases, and (2) failure or omission to truthfully state to the best of the employee's knowledge, in answer to inquiry made by the employer, the location, duration and nature of previous employment of the employee in which he was exposed to any occupational diseases as herein listed.

* * * * *

22 (d) Unless the employer during the continuance of the employment shall have actual knowledge that the employee has contracted a compensable occupational disease, or unless the employee or some one on his behalf, or some of his dependents, or some one on their behalf, shall give the employer written notice or claim that the employee has contracted one of said compensable occupational diseases, which notice to be effective

must be given within a period of five months after the date when said employee shall have ceased to be subject to exposure to such occupational disease, no compensation shall be payable on account of the death or disability by occupational disease of such employee.

22 (e) All claims for compensation for compensable occupational disease shall be forever barred unless a petition is filed in duplicate with the secretary of the Workmen's Compensation Bureau, at the State House in Trenton, within one year after date on which the employee ceased to be exposed in the course of employment with the employer to such occupational disease as hereinabove defined, or in case an agreement of compensation for compensable occupational disease has been made between such employer and such claimant, then within one year after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by such employer, then within one year after the last payment of compensation.

22 (f) All provisions of section II and section III applicable to claims for injury or death by accident shall apply to injury or death by compensable occupational disease, except to the extent that they are inconsistent with the provisions contained in paragraphs 22 (a) to 22 (f), both inclusive. The provisions in paragraphs 22 (a) to 22 (f), both inclusive, shall not apply to any claim for compensation for injury resulting from accident.

New Jersey Court of Errors and Appeals

A. FISHMAN HAT CO., INC., <i>Prosecutor,</i>	} <i>On</i> <i>Certiorari.</i>
<i>vs.</i>	
JACOB ROSEN, <i>et al.</i> , <i>Defendants.</i>	

ANSWERING BRIEF OF DEFENDANT.

The facts are stated in the prosecutor's brief and therefore do not require any re-statement.

POINT I.

Prosecutor's first point deals with the constitutionality of the Act of 1924 (P. L. 1924, Chapter 124), passed as a supplement to the Workmen's Compensation Act of 1911 (P. L. 1911, Chapter 95), and the point made is that the provision of the Supplement of 1924, for compensation for disability resulting from the occupational diseases therein enumerated, extends the scope of the Act of 1911 beyond the object of the title of that act, and therefore that the Supplement of 1924 violates the constitutional provision, article 4, section 7, paragraph 4, of the Constitution.

An act and its supplement are considered as one law. *Gas Light Company of New Brunswick v. Borough of South River*, Court of Chancery, 77 Eq. 487, 77 Atl. 473. Therefore, if provision for compensation for occupational diseases should have been constitutionally incorporated in the Act of 1911, it is constitutional if adopted as a supplement to that act.

The title of the Act of 1911 is as follows:

“An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment; establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder.”

This act was sustained as constitutional by the Supreme Court in *Sexton v. Newark District Telegraph Company*, 84 N. J. L. 85, 86 Atl. 451, and affirmed by our Court of Errors and Appeals.

Prosecutor's contention specifically is that the title of the Act of 1911 necessarily restricts and limits its object to providing for compensation for injuries caused solely by accident, and his authority is the opinion of the Michigan Supreme Court in *Adams v. Acme White Lead and Color Works*, 182 Mich. 157, 148 N. W. 485, L. R. A. 1916 A, page 283. In that case the employee's widow sought compensation for the death of her husband, due to lead poisoning, contracted in the employ of the prosecutor. The Workmen's Compensation Act of Michigan, unlike our own act, had no express provision for compensation for occupational diseases. The right to compensation was based upon implication. The Supreme Court of Michigan rejected that claim on the ground that an analysis of the act demonstrated that the intention of the Legislature was to provide compensation for injuries arising from accident alone. And *obiter dicta* held that if it were concluded that the provisions of the act did allow compensation for personal injury caused by occupational diseases, such a construction would to that extent render the act unconstitutional and in violation of the provisions of the Constitution of that State,

similar to article 4, section 7, paragraph 4 of our own Constitution. The title of the Michigan act is as follows:

“An Act to Promote the Welfare of the People of this State, Relating to the Liability of Employers for Injuries or Death Sustained by Their Employees, *Providing Compensation for the Accidental Injury to, or Death of Employees,* and Methods for the Payment of the Same, Establishing an Industrial Accident Board Defining Its Powers, Providing for a Review of Its Awards, Making an Appropriation to Carry Out the Provisions of This Act, and Restricting the Right to Compensation or Damages in Such Cases to Such as Are Provided by This Act.”

Attention is directed to the phrase of the act printed in italics, “Providing Compensation for the Accidental Injury to, or Death of Employees,” but the title of our own act does not contain any such restriction. And therefore, the *obiter dicta* of the Michigan Supreme Court is not an authority for the point made by the prosecutor.

We are concerned with the question whether the pertinent phraseology of our own act “for injuries received by an employee in the course of employment,” may without violation of the Constitution, article 4, section 7, paragraph 4, comprehend injuries by occupational diseases. That was the question presented to the Supreme Court of Massachusetts in the case of *in re Hurle*, 217 Mass. 223, 104 N. E. 336, L. R. A. 1916 A, page 279. In that case the claimant suffered personal injuries consisting of the total loss of vision in both eyes, resulting from acute optic neuritis, induced by poisonous coal tar gases. An award was made by the Industrial Accident Board and sustained by the Superior Court on appeal. And

on appeal to the Massachusetts Supreme Judicial Court the award was sustained, that court holding that the words "personal injury" as used in the Compensation Act of that State, included personal injury resulting from an occupational disease, as well as from accident, and on that point the Court said:

"The learned counsel for the insurer in his brief has made an exhaustive and ingenious analysis of the entire act touching the words 'injury' or 'injuries,' and has sought to demonstrate that it cannot apply to an injury such as that sustained in the case at bar. But the argument is not convincing. It might be decisive if accident had been the statutory word. It is true that in interpreting a statute words should be construed in their ordinary sense. Injury, however, is usually employed as an inclusive word. The fact remains that the word 'injury,' and not 'accident,' was employed by the Legislature through this act. It would not be accurate but lax to treat the act as if it referred merely to accidents."

Nor is there any justification in principle for giving the title of our act the restricted and limited effect attributed to it by the prosecutor.

There are two great divisions of industrial hazard, injuries through accident, and injuries through disease. It is true that the compensation principle was originally confined to injuries caused by accident. The cost of the injury to the employee through accident was placed upon the same basis as the injury to machinery and plant. Each was to be figured in as a part of the overhead charge. The compensation law made the cost in life and limb a charge upon the industry, rather than upon the sufferer or his family. No sound reason and no sound public policy has been or can be suggested which would

protect the victims of accident from modern industrialism and leave unprotected the victims of occupational disease.

Limiting compensation to personal injury arising from accident practically adds to the term "injuries" as used in the title, the words "by accident" or "resulting from accident." Doubtless the Legislature if it intended to do so, might have used these terms, but the Legislature saw fit not to incorporate in the title of the act any such limitation. The prosecutor now asks this court by judicial legislation, to adopt this limitation.

The courts will take judicial notice of events leading to legislative enactment of a public policy in the course of development. It is true that in 1911, when the Legislature adopted the first Workmen's Compensation Act, it provided only for compensation for injuries by accident. Is it not reasonable to assume that the members of the Legislature of 1911 foresaw that the logical development of the compensation principle would in time place compensation for injuries caused by occupational disease upon the same basis as compensation for injuries caused by accident? With an eye to article 4, section 7, paragraph 4, of the Constitution, they significantly omitted any such limitation in the title, leaving the act open for the supplements of 1924 and 1926, providing for compensation for personal injuries due to the occupational diseases therein enumerated.

Only in a plain case will a statute be declared void because its title does not express the object of the law. *State ex rel. Richards v. Hammer*, 42 Law 435, 44 L. 667.

We respectfully submit that on principle, as well as on authority, the supplement of 1924 is not beyond the scope of the object of the Act of 1911, as expressed in its title, and that therefore the supplement is constitutional.

POINT II.

Prosecutor contends that the Act of 1924 is in fact an amendment to the Act of 1911, and was unconstitutionally enacted because the section or sections of the Act of 1911 amended are not inserted at length.

The complete answer to that proposition is that no section or sections of the Act of 1911 are amended; that the provisions of the Act of 1924 are in addition to the Act of 1911, and that therefore it is in fact, as well as in name a supplement to the Act of 1911, and that the appropriate provision of article 4, section 7, paragraph 4, does not apply.

POINT III.

By Point III the prosecutor contends that if this court should construe the Act of 1924 as an independent act, then the award in this case is void because there is no provision in that act for a hearing and award before the Workmen's Compensation Bureau.

It is a sufficient answer to this point that we have shown that the Act of 1924 is a supplement to the Act of 1911, that it thereby became part of that act, and that the provisions of that act for a hearing and award before the Workmen's Compensation Bureau are applicable to the compensation allowed by the Act of 1924.

POINT IV.

In Point IV the prosecutor contends that the award should not be sustained because the petitioner did not prove an injury by accident arising out of and in the course of his employment, and quotations are made from the petitioner's petition in which the term "accident" is used.

An examination of the state of the case will show that an informal hearing was had before Commissioner Wegner and an award of one hundred twenty-five weeks at \$17.00 per week, plus \$140.00 for medical expenses was made. That thereafter a petition was filed for a formal hearing, as permitted by the act and the petition was made out on the forms provided by the New Jersey Department of Labor. Apparently these forms were printed before the enactment of 1924 providing for compensation for occupational disease, and the phraseology is limited to compensation for accidents. In his petition (State of the Case, p. 2), petitioner, in reply to the question, "What was the nature of the accident, and how did it happen?" answers, "Mercury poisoning contracted by reason of the occupation in which I was engaged." And to the question, "Where did the accident happen?" he answers, "December 14th, 1926, I was taken ill at the factory," and in reply to the last question (p. 2), "If any permanent injury has resulted, either amputation or loss of usefulness of any member, or impairment of any physical organ, explain fully," he answered, "Will be disabled permanently because of the poisoning above set forth."

It is clear from a sensible reading of this petition that the claim for compensation was made on a form used for compensation for injuries caused by accident, but the answers of the petitioner

claimed compensation for "mercury poisoning contracted by reason of the occupation in which I was engaged." And this is fortified by the answer filed by the respondent, the prosecutor here. On page 6, State of the Case, containing a copy of the employer's answer, appears the question, "Where did you first have knowledge of this accident?" And the answer is, "First knowledge of illness was received from doctor on February 14, 1927." And on page 7, in answer to the question, "What was the nature of the accident, and how did it happen?" the respondent says, "We have no knowledge or information sufficient to form a belief. We also deny that mercury or any chemical whatsoever is used anywhere in the plant of the respondent, and further deny that petitioner contracted mercury poisoning by reason of the occupation in which he was engaged with the respondent." To the question, page 7, second line from the bottom, "Give your understanding of any permanent injury which has resulted, either amputation or loss of usefulness of any member or impairment of any physical organ. Explain fully," employed answered, "we deny that he sustained any injury or disease in the course of or arising out of his employment, and deny that he will be disabled permanently, and further deny that he contracted mercury poisoning in the employ of the respondent." And to the last question, page 8, bottom of the page, "What other facts are there which you believe important?" the respondent answered, "The respondent contends that as the respondent neither furnishes, uses or makes use of mercury or any chemical whatsoever in its plant in the manufacturing of hats or for any other purpose, the petitioner did not suffer an accident or contract an occupational disease while in its employ."

By section 5 of the chapter 149, Laws of 1918, creating a Workmen's Compensation Bureau in the Department of Labor to adjust claims under the Employers' Liability Act, it is provided that the Bureau shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.

By section 9 of the same act it is provided that the official conducting hearings for compensation shall not be bound by the rules of evidence.

We submit that the whole scheme of the act is to provide for a procedure simple, informal and not requiring the strictness of technical pleading required at common law, and that where, as here, the respondent was apprised of the fact that the petitioner claimed compensation for an occupational disease, the use of the word "accident" on a stereotyped form of petition prepared by the Workmen's Compensation Bureau should not affect the respondent after an informal hearing and appeal to the Common Pleas, to defeat his claim.

POINT V.

By the prosecutor's fifth point it is urged that the evidence did not justify the determination of the Workmen's Compensation Bureau or of the Court of Common Pleas that the petitioner contracted an occupational disease during his employment. Petitioner testified (State of the Case, p. 22) that when he quit his work he had been in the employ of the respondent for fifteen years, working as a hatter; and on page 18, that he quit working for the respondent on December 14, 1926, because he had "the shakes"; that his particular branch of the work was that of

a starter, that he gets the hat from the mill when it is only "a big body"; that he shrinks it in hot water by the machine and that two or three months before he quit his work he started to feel the "shakes" and continued until "I started to shake the whole body." From the testimony of two experts it appears that the material that goes into the making of the body is the hair from rabbits' skins and that the process of removing the hair from the rabbits' pelt consists of applying mercury and quicksilver with a brush to the skin, that the mercury is also used for the purpose of removing the animal grease out of the fur, so that it shrinks, and that the hair is dipped into a solution of mercury and quicksilver, that it is then packed in cases and sent to the hat factories where it is assorted, put on a blowing machine to draw up the form, dipped in hot water and from there it goes to the starter, the branch in which the petitioner was employed. That there is no other process for the removal of the hair from the rabbits' skin than that above described. See testimony of Adam German, commencing on page 33, State of the Case. Bernard Hollander, the second expert called in behalf of the petitioner, testified that he was in the hatting trade all his lifetime, described the manufacture of hats, substantially the same as Mr. German. His testimony appears on page 37 of the State of the Case, and it shows that when the fur reaches the starter it contains the mercury (State of the Case, p. 39). Emanuel Fishman, the manager of the respondent's plant, testified in behalf of the respondent, and his testimony in connection with the presence of mercury in the hat stock used in their plant appears on page 45, State of the Case.

"Q Did the stock contain any mercury?

A To our knowledge, it does.

Q The stock contains mercury? A You mean the fur—

Q The fur stock? A Well, it is really all different kind of names.

Q Well, I mean is there any parts that do or any parts that do not? A Some parts have and some parts haven't.

Q Which parts haven't? A Well, blown fur wouldn't have.

Q How much of that do you use? A Twenty per cent.

Q And eighty per cent.— A Is treated with mercury.”

Dr. H. Kessler, the medical director of the Rehabilitation Clinic, testified that he examined the petitioner on December 15, 1926; March 16th and April 18, 1927, described his condition and concluded (State of the Case, p. 47), “These symptoms, taken in consideration with the history he gave me, led me to diagnose his condition as one of chronic mercurial poisoning.”

“Q What was the history he gave you?

A Gave me a history of being exposed to working as a hatter, as a sizer.”

In prosecutor's brief on page 13, Dr. Kessler is quoted as follows, “he showed no lead or other occupational disease.” This quotation is somewhat garbled, as the record shows that what Dr. Kessler said is:

“He was anemic, showed puffiness around his eyelids; showed no lead or other occupational disease, *more than in his tremors*. He did show a gingivitis, a rash of the lining of the mouth. The most characteristic symptom that he presented was that of tremors of the muscles of his eyes and over his upper extremities, his hands. These symptoms, taken in consideration with the history he gave me, led me to diagnose his condition as one of chronic mercurial poisoning.”

Dr. Morris S. Avidan, connected with the Compensation Bureau, testified in behalf of the respondent, that he specializes in treatment and examination of patients injured as a result of industrial accidents, and that he first commenced to treat the petitioner on March 22nd or 23rd, 1927. He gives the result of his examination (State of the Case, p. 50) and he says:

“Q Doctor, did you make any diagnosis as to the condition from which he was suffering? A Why, he had a tremor of hands, limbs, neck. He was highly neurotic. Then he gave a history of having worked as a hatter, and the first thing that entered my mind was the possibility of chronic mercury poison.”

And on cross examination he testified:

“Q You said that on your first examination you diagnosed his case as being mercury poison? A Well, I thought it was on account of being a hatter.

Q You haven't changed your opinion? A I think from what I have read and learned, I think probably it is.

Q And you would diagnose it as mercury poison? A When a man worked for fifteen years—

Q The symptoms are those of mercury poison? A Yes, they call it hatters' palsy” (p. 51).

By stipulation between the counsel for the respective parties, it was put on record that Dr. Ambrose F. Dowd would have testified that the petitioner was 33 1/3% disabled as the result of mercury poisoning, based on his examination of April 28, 1927. Thus we have the testimony of three physicians that the condition from which the petitioner suffered was mercurial poisoning, and Drs. Kessler and Avidan testified that when they took the objective symptoms in connection with the fact of the petitioner's

history, that he was employed in the hatting industry, they concluded that he was suffering from mercury poisoning. There is no contradiction of this testimony.

We respectfully submit that a complete and conclusive case was established that the petitioner was disabled as the result of mercury poisoning, a disease common to the hatters' trade, an occupational disease, made compensable by the supplement of 1924.

POINT VI.

By Point VI it is contended that the judgment should be reversed because the Court did not make a finding that the petitioner sustained a personal injury by compensable occupational disease arising out of and in the course of his employment. The Court did find (State of the Case, p. 11) second finding, that on the aforesaid date (December 17, 1926), the petitioner was disabled by a compensable occupational disease, to wit, mercury poisoning, and that the exposure thereby occurred during his employment and that the disability commenced within five months after the determination of said exposure.

The argument of the prosecutor is reduced to the proposition that the Court used the word "disability" instead of "injury." The second finding particularly sets out that on December 17, 1926, the petitioner was disabled by a compensable occupational disease, that the exposure occurred during his employment, and that the disability commenced within five months after the determination of such exposure. Although there is no express statement that the injury arose out of and in the course of his employ-

ment, this is the logical and direct inference from the other findings, that the petitioner was disabled by a compensable occupational disease, and that the exposure thereto occurred during his employment.

If, however, the Court should find that because the determination of the learned Judge of the Court of Common Pleas on appeal, does not contain precisely the findings required by the act, then we respectfully submit that the proper course would be to refer the case back to the Court of Common Pleas to make the proper determinations.

POINT VII.

The seventh point in the prosecutor's brief is that there is no evidence in the case that the employer, during the continuance of the employment, had actual knowledge that the employee had contracted a compensable occupational disease, or that the employer or someone in his behalf gave the employer written notice or claim that he had contracted one of said compensable occupational diseases.

The prosecutor, by his answer to the employee's claim, filed in the proceedings before the Workmen's Compensation Bureau, and set out on page 6 of the State of the Case, admits, in response to the question, "When did you first have knowledge of this accident?" answered, "The first knowledge of illness was received from doctor on February 14, 1927." And the petitioner, in his testimony, page 18, shows that on December 14, 1926, he quit working because he was ill and that he told the "boss," Mr. Morris Fishman, and he was asked, "What did you tell him?" and his answer was, "I shake

me—"I cannot work." He also testified that after he saw Dr. Hoeler, his physician, the doctor wrote a letter to the firm, which is in evidence as "Exhibit P. 1," and that appears on page 60, State of the Case, and by it it appears the statement, "Mr. Jacob Rosen is under my care and treatment from December 14, 1926, to date, suffering from mercurial poisoning (industrial disease), being unable to work with same."

On page 20 appears the following admission by the attorney for the respondent, the prosecutor here:

"Mr. Kraemer: We served you notice to produce that letter, Mr. Giddes, have you got it?"

Mr. Giddes: The only notice or letter I have from the doctor to the employer is, according to the information I have received, one of February 14, 1927.

Mr. Kraemer: I offer that note as notice and it is to the notice that the petitioner himself testified to.

Mr. Giddes: I have no objection to that being made part of the record.

(Paper marked Exhibit P. 1.)"

It is to be borne in mind that the prosecutor, by his answer to the petitioner's petition, filed in the proceedings before the Workmen's Compensation Bureau admits that the first knowledge of the illness was received from doctor on February 14, 1927.

Taking this admission in connection with this evidence it clearly appears that on February 14, 1927, Dr. Hoeler sent the prosecutor a notice, apparently a copy of one sent to J. C. Wegner, referee in the Workmen's Compensation Bureau, to the effect that the petitioner was suffering from the disease mentioned in the testimony. This notice fairly appraised the prosecutor of the

fact of the injury. See *Doyne v. Stollerman*,
131 Atl. 68.

We respectfully submit this finding of fact by
the Workmen's Compensation Bureau and by
the Common Pleas Court, is based upon evidence
in the case, and we submit that the Court should
not reverse the same.

For all of these reasons, we respectfully sub-
mit that the judgment should be sustained.

Respectfully submitted,

KRAEMER, SIEGLER & SIEGLER,
Attorneys for Defendant.

JOSEPH KRAEMER,
Of Counsel.

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121 Ill. 61.

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Respectfully submitted,

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